

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Rosales Alex J
 (Last) (First) (Initial)

Prisoner Number V 76601

Institutional Address P.O. Box 409020, Ione, CA. 95640

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

Alex Jesse Rosales
 (Enter the full name of plaintiff in this action.)

vs.

MARTEL, M.
 (Enter the full name of respondent(s) or jailor in this action)

CV

08

2104

Case No. _____
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

E-filing

(PR)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

530 new

FILED

APR 22 2007

RICHARD W. WELKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

RMW

Handwritten signature

008-2104 RMW

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland):

14 Santa Clara County Superior Court San Jose

15 Court Location

16 (b) Case number, if known CC319535

17 (c) Date and terms of sentence March 24, 2005 Life without Parole

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes XX No

20 Where?

21 Name of Institution: Mule Creek State Prison

22 Address: 4001 Highway 104, PO BOX 409000, Ione, CA 95640

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 First Degree Murder PC 187

27 Robbery PC 211/215.5(c)

28 Carjacking PC 215

3. Did you have any of the following?

Arraignment: Yes XX No

Preliminary Hearing: Yes XX No

Motion to Suppress: Yes XX No

4. How did you plead?

Guilty Not Guilty XX Nolo Contendere

Any other plea (specify) NO

5. If you went to trial, what kind of trial did you have?

Jury XX Judge alone Judge alone on a transcript

6. Did you testify at your trial? Yes XX No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes XX No

(b) Preliminary hearing Yes XX No

(c) Time of plea Yes XX No

(d) Trial Yes XX No

(e) Sentencing Yes XX No

(f) Appeal Yes XX No

(g) Other post-conviction proceeding Yes No XX

8. Did you appeal your conviction? Yes XX No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes XX No

Year: 2006 Result: Judgement Affirmed

Supreme Court of California Yes XX No

Year: 2006 Result: Review Denied

Any other court Yes No XX

Year: Result:

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes _____ No XX

(c) Was there an opinion?

Yes _____ No XX

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes XX No _____

If you did, give the name of the court and the result:

The Court Of Appeal - Sixth Appellate DistrictRelief Granted H028891 July 20, 2005

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes XX No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: Santa Clara County Superior Court

Type of Proceeding: Petition for Writ Of Habeas Corpus

Grounds raised (Be brief but specific):

a. Conviction is Unconstitutional: Ineffective

b. Assistance of Counsel; Counsel's performance

c. deprived right to fair trial (US Constitution,

d. Amendment(s) V, VI, XIV

Result: Denied (SEE PGS. 60-61) Date of Result: May 8, 2007

II. Name of Court: Court of Appeal-Sixth Appellate District

Type of Proceeding: Petition for Writ of Habeas Corpus

Grounds raised (Be brief but specific):

- 1 a. Conviction is Unconstitutional: Ineffective Assistance
2 b. of Counsel; Counsel's performance deprived right to
3 c. fair trial (US Constitution, Amendment(s) V, VI, XIV)
4 d. _____

5 Result: Denied (See pg 52) Date of Result: July 27, 2007

6 III. Name of Court: The Supreme Court Of California

7 Type of Proceeding: Petition for Writ of Habeas Corpus

8 Grounds raised (Be brief but specific):

- 9 a. Conviction is Unconstitutional: Ineffective Assistance
10 b. of Counsel; Counsel's performance deprived right to
11 c. fair trial (US Constitution, Amendment(s) V, VI, XIV)
12 d. _____

13 Result: Denied (See pg 53) Date of Result: March 26, 2008

14 IV. Name of Court: NONE

15 Type of Proceeding: NONE

16 Grounds raised (Be brief but specific):

- 17 a. NONE
18 b. NONE
19 c. NONE
20 d. NONE

21 Result: NONE Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No XX

24 Name and location of court: NONE

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: CONVICTION IS CONSTITUTIONALLY UNJUST (USC, A(8) V, VI, XIV); INEFFECTIVE
6 ASSISTANCE OF COUNSEL; COUNSEL'S PERFORMANCE AT TRIAL DEPRIVED RIGHT TO FAIR TRIAL

7 Supporting Facts: _____
8 SEE pgs 1 - 33.
9 _____
10 _____

11 Claim Two: NONE

12 _____
13 Supporting Facts: _____
14 _____
15 _____

16 _____
17 Claim Three: NONE
18 _____

19 Supporting Facts: _____
20 _____
21 _____
22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:
25 _____
26 _____
27 _____
28 _____

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 See pgs. 3 - 5

5
6
7 Do you have an attorney for this petition?

Yes _____ No XX

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

4-11-08

14 Date



Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

INTRODUCTION TO PETITION

Ineffective assistance of counsel

Counsel's performance at trial deprived my right to receive a fair trial

A violation of U.S. Constitution, Amendment(s) V, VI, XIV

The purpose of this petition is to show that the effective presentation of my defense at trial required the establishment of my credibility before the jury because I was going to testify in my defense.

It is to show that the prosecution intended to present evidence to undermine my credibility and that had to be prevented every time possible.

It is to show that the prosecution did present evidence to undermine my credibility through the presentation of witness testimony. Specifically that of Fedele and Chavez. Where they would implicate me as the driver of the Mazda.

It is to show that counsel entirely failed to test the reliability of those two witnesses before the jury. That his cross examination failed to expose any helpful fact for the defense.

It is to show that these witnesses made prior statements that held indispensable fact regarding their reliability. Fact that would show that one witness' statement evolved from not implicating me at all to completely implicating me but conflicted with state's other evidence and that it was completely cleared up by the time the jury got to hear it. The other witness rendered fact at trial that would prove to be false upon comparison with his prior statement. It is to show that none of these facts were exposed to the jury at trial.

It is to show that the jury was very concerned with getting these witnesses' facts straight that it actually requested a second look at it during deliberations. They wanted their testimony "specific to the Mazda and the location of the person inside it" (CT502A-E) to be read back.

It is to show that counsel did not present any evidence to constitute effective presentation of the defense against the robbery and carjacking charges. It is to show that despite that fact he requested guilty verdict to be returned for the murder charge as a lesser offense to request and hopefully get not guilty verdicts for the robbery and carjacking charges. It is to show that that inquiry was ineffective because counsel's failure to

present the available evidence failed to allow the record to support the jury's ability to honor his request had it chose to.

It is to show that all the evidence needed to effectively present my defense was in counsel's possession prior to trial. That his failure to visit with me and discuss the evidence he had ~~with me~~ failed to allow me to expose its significance to him and how it could possibly aid the defense. That resulted in his failure to present any of the evidence ~~he had~~ at trial.

In short, it is to show that counsels every action leading up to and into trial failed the effective presentation of my defense. That he caused the ineffective cross examination of two key state witnesses. That he caused the absence of any evidence to corroborate my testimony at trial. That his performance altogether deprived my right to receive a fair trial as guaranteed by the U.S Constitution, Amendment VI. And for those reasons, my conviction is Constitutionally unjust and should be overturned by this court.

The final part of this petition is to show that federal review is permitted because the state court's adjudication of my claim is based on an unreasonable determination of the facts in light of the evidence and it is contrary to clearly established federal law, as determined by the Supreme Court of the United States. I believe it is due to misapprehension of the claim. And I respectfully ask this court to hear my claim.

P.S. I wanted to honor the instructions of the application as much as absolute possible so I completely refrained from any legal citations to focus entirely on the facts of my case. Please refer to the pages set aside for all the cases I believe apply. (pgs.3-5) Please do not limit it by my list. I simply do not know of all relevant case law. I did the best I could hoping to make litigation of my claim easier. Please note that all reference to the symbols (CT) goes to the Clerk's transcripts from trial. And all reference to (RT) goes to the reporter's transcripts at trial.

Supporting case law
and

Amendments to the United States Constitution

United States Constitution: Amendments V, VI, and XIV

Alcala v Woodford 334 F.3d 862,883

Brandit v Davis 191 F.3d 887

California v Green 399 U.S. 149,164

Ceja v Stewart 97 F.3d 1246

Davis v Alaska 415 U.S. 308, 94 S.Ct. 1105, 1111

Duran v Hopper 161 F.3d 655

Fuller v Roe 182 F.3d 699

Green v Elroy 360 U.S. 474,496

Goldberg v Kelly 397 U.S. 254,269

Hart v Gomez 174 F.3d 1067 -----Harris v Wood 64 F.3d 1432,1438

Hendricks v Calderon 70 F.3d 1032

Johnson v Baldwin 114 F.3d 835

Lily v Virginia 527 U.S. 116

Lisenba v California 314 U.S. 219,236

Lockhart v Fretwell 113 S.Ct 838,883,334

Mathews v Eldridge 424 U.S 319,344

Mills v Singletary 161 F.3d 1273

Strickland v Washington 466 U.S 668

Sullivan v Louisiana 113 S.Ct 2078

Thomas v Hubbard 273 F.3d 1164,1180

United States v Cronic 466 U.S. 648

United States v Frederick 78 F.3d 1379,1387 -----United States v Thomas 467 F.3d 49

United States v Tucker 716 F.2d 527 -----Wiggins v Smith 123 S.Ct. 2527

Williams v Washington 59 F.3d 673,681-682

Wilson v Henry 185 F.3d 986,987

supporting case law cont...

Hattem v United States 283 F2d 337

United States v Gavdin 115 S.ct 2310,2314-2315

United States v Ndiaye 434 F.3d 1270

United States v Scheffer 118 S.ct 1261

CRAIG V. KENTUCKY 476 U.S. 683

CALIFORNIA V. TROMBETTA 467 U.S. 479

CRAWFORD V. WASHINGTON 541 U.S. 36

Supporting case law

for federal review
(pgs. 34-43)

Avila v Galaza 297 F.3d 911

Bell v Cone 543 U.S. 447

Brown v Payton 544 U.S. 133

Castillo v McFadden 399 F.3d 993

Jackson v Edwards 404 F.3d 612

Mitchell v Esparaza 540 U.S. 12

Nunes v Mueller 350 F.3d 1045

Taylor v Maddox 366 F.3d 992,1000-1001

Peterson v Lampert 319 F.3d 1153

FACTS UPON WHICH CONVICTION IS BASED

1. On July 10, 2003, Rodney Fedele was riding his bicycle on Williams Street in San Jose. As he passed Fifth Street he observed a man leaning face-first against the side of a small gold or silver car while a second man went through his pockets. Based on Fedele's similar experiences, he thought cops were "frisking" the man against the car so he turned around to get a better look. After he turned around and went down Fifth Street, he stopped at a tree and watched as the guy doing the frisking beat on the other guy being frisked. He beat the guy with a baseball bat right beside the car. He hit him at least 10 times all over his body before he fell down. When he did, he hit him at least once or twice more. (RT 98-103)

2. In the meantime Fedele observed a third person seated inside the car on the driver's side, behind the steering wheel. And although he could hear talking and yelling, he could not determine if it was "them yelling at each other" or at "the guy" because he wasn't that close. (RT 99, 103-104)

3. Fedele left and went down Fourth Street to San Salvador Street. As he began heading towards the 7-Eleven on Sixth Street to call an ambulance, as he was coming up on Fifth Street, he observed the same car he seen earlier making a u-turn at the corner. It went back up the street to where it was earlier. Fedele went another half a block and saw a cop coming out of the 7-Eleven. He told the cop; "hey, somebody is being beat down on the street". The cop followed him back. Fedele told the cop; "there goes the people there in the car, in the car and this little red truck". (RT 104-109)

4. Fedele took the cop straight to the body. The body was laid out in the middle of the road, nowhere near where the beating took place. (RT 105)

5. Xiao Hong Huang lived in an apartment on Fifth Street with a window that faces the street. She said that at about 12:35a.m., she was getting ready for bed when she heard a loud banging noise on the street outside. She thought an object was hitting a car so she looked out her window to check on her car. She saw a bald or short haired guy pick up a baseball bat from the curb on the street. A silver four-door car traveled for about a half block from San Salvador Street. Its headlights were on. It stopped in front, close to the man picking up the bat. (RT 298-304)

6. Although she could not see the driver, she heard the driver of the car ask the man with the bat if everything was okay. The man replied that

everything was fine. The silver car then drove off towards Williams Street. The man with the bat went into an alleyway. A few seconds later, she saw a dark colored truck drive out from the alleyway so she assumed that it was the man that ran in that got into the truck and drove off. (RT 304-308,313-317)

7. Huang saw both vehicles travel towards Williams and hit some kind of bump. They went slightly upwards. There was a big "thump noise, like bump up". (RT 306-307)

8. Huang said that she has told this story to several investigative authorities between the dates of July 10,2003 and January 20,2005. She said that her mind was freshest nearer to July 10, 2003. (RT 308-313,315)

9. Huang said that she didn't tell anyone about the truck going over a bump before January 20,2005, that day in court, because she didn't go into details regarding the truck in previous statements. She also said that even after she found out that the "bump" was in fact a body, she didn't tell any one before January 20,2005 because she was not asked about it. She said she just answered the questions as they are asked. (RT 309-313,317-318)

10. Natalie Rose Brannon also lived in an apartment on Fifth Street with a window that faces the street. At 1:02 a.m. she was standing at her bedroom window setting her alarm clock. She heard a struggle, sounds of a physical altercation, out in front of her apartment. She heard someone say "get away from my car, get away from me". Brannon became alarmed because she just moved her car to a parking space in front of the building and was afraid that it was her car. She looked out her window and saw that it was not. However, to her left, she saw a Honda type car parked in a dark spot clearly out of place. It was idling with its lights on and the driver's side door open. It was pointing towards her, towards San Salvador Street. (RT 319-325,328-329)

11. Brannon went into another room to tell her roommate that someone was being carjacked down stairs and needed help. Her roommate was very ill and was lying down so he told her to go back and see if she saw or heard anything else. When she did, she saw the same car she had seen earlier but did not see anything else so she went into the bathroom to brush her teeth. When she finished, she went back into her bedroom and got into bed when she heard loud noises out side. It sounded like a car was driving in circles directly in front of her apartment. (RT 321, 325-326,329)

12. Although a large tree obstructed her view, Brannon did see a car take off down the street towards San Salvador Street. It was bigger, possibly red. At that point Brannon did not see the idling car she had seen earlier because she was distracted by the car taking off and the person lying in the middle of the street. (RT 326-331)

13. Javier Angel Chavez was shown a photograph of Fifth Street and explained that he lived on the right side of the picture and that the top is San Salvador Street. Chavez lived on the second story of an apartment on Fifth Street. He said that at about 12:00 to 12:30 a.m. he was watching TV and heard alot of metallic noises, like some thing metallic hitting the ground. He looked out his window and saw a body lying in the street near a green trash container. He explained that it would be on the left side of the photograph of Fifth Street. (RT 343-347,362-364)

14. Chavez saw a small four-door car traveling with its lights off towards the body in the street. The car was possibly white. It stopped about 20 to 25 feet in front of the body on the same side of the street. Chavez said that a person exited the "passenger's" side carrying a baseball bat. He walked towards the body. Using the baseball bat, he pushed over the body, "ripped" something from the neck area and, went through the pockets of the pants on the body. (RT 347-353)

15. Chavez saw someone in the white car on the "driver's" side. He did not get out of the car. The man carrying the bat walked over to the "driver's" side of the car. He "dipped down" and appeared to be talking to the driver of the car before he walked to a truck parked in a driveway nearby. (RT 350,354-357)

16. Chavez said that, without changing positions from when it first drove up, the white car ran over the body in the street and dragged it for five car lengths before it backed up over the body again and eventually went towards Reed Street with the truck following. 15 to 20 minutes later, two police cars came. One stopped with the body and one followed the other cars. (RT 356-361)

17. Sergeant Amado Ramirez, a San Jose State University police officer, was on duty at 1 a.m. on July 10, 2003, along with fellow officers, Officer Brad Beavers and Officer Joel Anaya. Sgt. Ramirez said that he was in the

parkinglot of the 7-Eleven store on Sixth Street and San Salvador Street when Rodney Fedele rode up to him on his bicycle and told him that someone was getting beat up with a bat about three streets west of where he was. Sgt. Ramirez immediately went to that direction and at the same time advised dispatch of the type of call he had. Fedele followed behind him to ensure that he made it to the correct location. At first, Sgt. Ramirez passed the correct street, Fifth Street, but could hear Fedele yelling that he went too far. Sgt. Ramirez backed up and went southbound on Fifth Street. He immediately noticed the headlights of a red SUV or a truck with a camper on it in his lane. It was backing away quickly, as if leaving in a hurry, towards Williams Street. (RT 39-46,51-53)

18. Sgt. Ramirez requested his officers to come to his aid, Officer Beavers came first. He immediately told him to try and catch up to a red vehicle that just went westbound on Williams Street and try to do a vehicle stop on the vehicle. (RT 44,46-48)

19. With a spotlight, looking from side to side, Sgt. Ramirez saw a male subject laying face down mid block of Fifth Street. He got out of his vehicle to check on him. When he did, he noticed that he had a series of visible injuries and blood coming out from his head. He checked his vitals and called out to him. The male subject was unresponsive so. Sgt. Ramirez summoned the Fire Department and an ambulance. (RT 46,48-51)

20. The man in the street was later identified as Jose Luis Ramirez, DOB 8/25/1962. (RT 55)

21. Sgt. Ramirez said that although there may have been a second vehicle on the street that attracted his attention, other than the truck previously described to the Court, his main focus was on the red truck so. he specifically told the other officers working with him to follow the red truck. (RT 54-55).

22. Officer Bradley Beavers was at the 7-Eleven on Sixth Street. At 1 a.m. he was inside the store grabbing a snack when an unknown male, not Fedele, opened the door and said to him that someone was getting beat up with a bat. He went out to his patrol car and noticed that Sgt. Ramirez was going in the direction that was pointed out to him. He noticed Fedele sitting at the corner of San Salvador Street and Fifth Street pointing in the direction of Fifth Street. Sgt. Ramirez led the way down Fifth Street

when Officer Beavers noticed a man laying face down in the middle of the street. Sgt. Ramirez stopped at the man and said over the radio that he saw the suspect vehicle or, a vehicle matching the description, going southbound on Fifth Street and turning westbound on Williams Street. (RT 110-113)

23. Once Officer Beavers got on Williams Street, he noticed two vehicles, a Toyota Tacoma truck and a Mazda compact car, at the stoplight of Williams Street and Fourth Street. He then asked, to confirm with, Sgt Ramirez for the description of the suspect vehicle. Sgt. Ramirez told him that it was a red SUV type vehicle. From a distance, the vehicle in front of him, a Toyota Tacoma truck with a camper shell, did indicate an SUV. (RT 113-115)

24. The light turned green and Officer Beavers turned on his emergency lights. All three vehicles, the patrol car, the Toyota and, the Mazda, continued westbound on Williams Street. They stopped at the light on Third Street. Officer Beavers was not sure if they stopped for his lights or the traffic light, so he exited his patrol car. The vehicles turned northbound onto Third Street. Traveling below the speed limit, at 25 MPH the vehicles turned eastbound onto San Carlos Street. As they turned their tires were screeching. The vehicles speed increased to 30 to 35 MPH. They turned southbound onto Fourth Street where Officer Anaya joined the pursuit and stopped in the middle of the street. After passing Officer Anaya, the speed increased to 45 to 55 MPH as they approached the 280 freeway. On the freeway, the speed increased to 65 MPH. They continued towards the 87 entrance. Officer Beavers dispatched that he believed the Mazda was involved. They left the freeway through the Alma exit and proceeded right on Lelong Street. Officer Beavers got in front of the Toyota and read the plate off of the Mazda. It was 4SGV995. They continued to Willow Street where Officer Beavers began driving beside the Mazda to make his presence known to the driver in an attempt to get it to stop. He could not tell any thing about the driver other than that there was one. The speed increased to 60 to 65 MPH in a residential, 25 MPH, area. The Mazda sped up to in excess of 90 MPH and Officer Beavers lost sight of it. (RT 116-122)

25. The Toyota truck was eventually stopped at the area of Goodyear and Plumb, still in San Jose. The driver exited the vehicle with his hands up and at gun point. He was ordered to the ground but did not comply so. Officer Anaya grabbed him, took him down and, placed him into custody. Officer Beavers noticed that the driver had blood on him. (RT 122-124)

26. Officer Beavers eventually searched the Toyota and located a bat in the front cab area of the vehicle. He took a Poloroid photo of the cab to preserve or memorialize the placement of the bat as he saw it. People's exhibits #6 and #7 depict the placement of the bat. (RT 124-127)

27. Officer Beavers identified Defendant Pineda as the driver of the Toyota truck. (RT 123)

28. Joel Jesse Anaya, a Salinas City Police officer, was previously employed by the San Jose State University Police Department and was on duty on July 10, 2003. At 1 a.m. he was in the area of Eleventh Street and Keyes when he overheard Sgt. Ramirez's dispatched information that he needed Fire and AMR assistance for a victim lying in the street of Fifth Street and San Salvador Street. He also overheard that Officer Beavers may have a suspect vehicle in front of him on Fourth and Williams. (RT 56-58)

29. Officer Anaya went to assist Officer Beavers in the vehicle stop and eventually ended up traveling in the wrong direction on Fourth Street. Fourth Street is a one way southbound street. Officer Anaya observed Officer Beavers' patrol car behind a red SUV that was behind a silver Mazda sedan headed in his direction on Fourth Street. He positioned himself on the driver side of the Mazda and exited his vehicle with his firearm out. He approached the Mazda and yelled at the driver of the Mazda to stop out of concern for his own personal safety. He observed the red SUV in between the Mazda and the patrol car. According to Sgt. Ramirez's traffic over the radio, only the red SUV was involved with the victim being down on Fifth Street and needed to be stopped so he waved the Mazda to move along. The driver, a young hispanic male with black hair and fair skin was alone in the Mazda. (RT 58-65)

30. After the Mazda was waved by, the red SUV followed and both officers resumed pursuit of it. They went to the I-280 then got onto the I-87. Each time the Mazda would change lanes the red SUV would also. They exited the freeway at the same time. This led the officers to believe that the Mazda was leading the red SUV in the pursuit. Officer Beavers got in between the two vehicles at that point and read the liscence plate over the air. (RT65-67)

31. Although the pursuit began slow it led up to speeds of 90 MPH where the Mazda ran through stoplights and the officers lost sight of it. They continued to remain behind the red SUV and eventually stopped it at Goodyear and First Street. They exited their vehicles and placed the driver into custody. He was later identified as the Defendant Sergio Timmothy Pineda. (RT67-72)

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32. The Toyota's liscense plate read 6U05976 and was registered to its owner, Jose Luis Ramirez. The persuit lasted approximately 3½ minutes. At the end, Officer Anaya asked Pineda if he knew who was driving the Mazda. Pineda responded that "He didn't have anything to do with this. I did what I did for my own reason. I was the only one involved. And I know my rights and that's all I'm going to say to you.". (RT 72-76,91-92,95-96)

33. Richard Benitez, a San Jose City Police Officer, was on duty July 10, 2003. At 1:08 a.m. he was parked in his patrol car along the east curb line of First Street, near the Willow Street intersection when he heard a vehicle traveling at a fast speed approaching. A small silver car stopped at the intersection. It was driven by a hispanic male in his twenties with medium-toned skin and dark hair. He was alone in the car. He looked at Officer Benitez and appeared to be suprised to see the officer. The driver turned southbound onto First Street. (RT 155-157,159)

34. Officer Benitez then heard police sirens in the distance and became concerned so he waited there rather than pull over the driver in the silver car. He then noticed that the sirens were approaching his location from Willow Street. A red pickup truck approached and then turned southbound onto First Street in obvious persuit by two San Jose State Police Department patrol cars. Officer Benitez joined the persuit. By the time he caught up to the patrol cars they had everything under control so he just stood by. (RT 157-158)

35. San Jose Officer Jaymes McBrayer was responsible for processing Pineda after he was taken into custody. (RT 163-164) McBrayer noticed that there were possible bloodstains on Pineda's left sleeve, left pant leg, and on his hands. (RT 166-167,169-170,173) McBrayer took samples of the blood on Pineda's hands. (RT 171) He also took his clothing which consisted of a pair of men's blue jeans and a New Jersey Devils jersey. (RT 172) In speaking with Pineda, McBrayer did not believe that he was under the influence of alcohol. (RT 175)

36. Sometime after midnight, Pineda Sr. was awakened by a telephone call.(RT 140) A female voice he did not recognize said to "call Chucky's phone." (RT 138) Pineda,Jr.'s nickname was Chucky. (RT 138) Pineda,Sr. made the call, which was answered by Petitioner. (RT 142-143) Petitioner sounded very excited and nervous, and told Pineda, Sr. that the police were chasing his son and that he himself was lost. (RT 143-144,146,149) Petitioner did

not say that he also was being chased by the police. (RT 147) He did say that he was at the Double Tree Hotel off of Highway 101. (RT 148) Pineda, Sr. gave Petitioner directions back to his house, and also told him to just park the car, and Pineda, Sr. would recover it the next day. (RT 147) Petitioner agreed to do so. (RT 148) Pineda, Sr. asked petitioner what was going on, and Petitioner told him there had been "some type of robbery" and "an altercation with another man." (RT 150-151) Pineda, Sr. was never actually told that anyone had been hurt or killed. (RT 153-154) Pineda, Sr. went back to sleep. (RT 148)

37. At about 1:10 a.m., Petitioner called his mother Gloria Rosales. (RT 181) [To avoid any confusion with Petitioner, Gloria Rosales will be referred to as "Gloria."] Gloria thought he sounded like he was going to cry and he said "I'm scared. I'm confused. I don't know what to do. Will you please come and pick me up?" (RT 181,192) He further told her that Chucky, whom she knew to be Pineda, had just beat somebody with a bat. (RT 181-182,193) He explained that the beating had resulted from "a road rage" (RT 193) Gloria did not remember Petitioner telling her that Pineda had also taken the man's truck, though she had testified to that at the preliminary examination. (RT 182-183)

38. Gloria left her home in Modesto at about 1:30 a.m. (RT 194) She picked Petitioner up in San Jose at 3:00 or 3:30 a.m. (RT 195) He was in pain due to a broken foot he had suffered about two weeks before the incident, and which was still in a cast requiring him to use crutches. (RT 199-200) He had been scheduled for surgery. (RT 200) He was crying and fell asleep on the way home. (RT 195)

39. At approximately 7:00 a.m., about 10 police officers came to Pineda, Sr.'s door. (RT 148) he was taken to the police station where he told Detective Millard that he knew where the silver Mazda could be found. (RT 148-149) Later in the day, Petitioner was located at his home by San Jose Police. (RT 406) He was asked to accompany them down to the San Jose Police Department for an interview. He agreed and was interviewed by homicide detective Robert Millard and Officer Ed Bettencourt. (RT 238,406) He initially told them that he had stayed home that evening, but then said that he had been downtown San Jose when he was approached by Ramirez, who was drunk. (RT 407-408) Petitioner said that he was the passenger in a silver Mazda when Ramirez was told that there was a party at a nearby location. (RT 408) He further

told them that at some point, he climbed over the center console into the driver's seat to drive the car away, and that as he did so, he ran over Ramirez. (RT 409) He dragged Ramirez for some distance, then reversed the car in an effort to get the car off of Ramirez, instead driving over Ramirez again. (RT 409) Petitioner further told them that he saw officers arriving, and he fled because he was on probation. (RT 410) He related that he had called Pineda's father who told him to get rid of the car and go home, so he had abandoned the car at the Double Tree Hotel. (RT 410) He admitted that when he had left the scene of the crime, he knew that Ramirez's cell phone was in the car. It was "discarded" into a trash can. (RT 238,240,411) He then called his mother to pick him up. (RT 411)

40. Petitioner accompanied Officers to the Double Tree Hotel and showed them where he had disposed of the cell phone. However, because the trash can had been emptied earlier by janitorial services, it was not found and never recovered. (RT 241-242) Bettencourt allowed Petitioner to speak to his mother. (RT 242) Crying Petitioner apologized for lying to her, saying that there had been no road rage incident, but that there had been a robbery although Petitioner did not participate. (RT 196-199,242-243)

41. The crime scene was processed by San Jose Police Officer Mark Conrad. (RT 248) Fifth Street is a student housing residential area south of San Jose State University, bordered at the north end by San Salvador and at the south end by Williams Street. (RT 251,253)

42. Conrad was briefed by his commanding officers based on statements gathered from witnesses and was able to support the statements by going in and seeing the physical evidence. (RT 253) He found a pattern of blood and shreds of clothing in the southbound lane that he believed to be where Ramirez had been assaulted, lost a large amount of blood as a result of the assault, and was then run over by a vehicle and dragged from north to south along the asphalt for a distance of about 118 feet. (RT 257-267) Conrad examined the inside of Ramirez's Toyota Tacoma pick-up in which he saw both a baseball bat and a hollow galvanized metal pipe. (RT 269) There was blood on the bat. (RT 271) An examination of Pineda's Mazda in a sterile environment with the proper detecting equipment, lighting, chemicals and cameras, revealed blood in the interior passenger side and on the front portion of the under-carrage. (RT 272-274,290-291) He also saw blood on the fenders and wheel well area that he theorized to have resulted from the vehicle driving through blood and casting it off of the tires. (RT 274-276) Inside the Mazda, Conrad

saw blood on the center console, which he opined could have gotten there when someone wearing bloody clothes sat in the passenger seat and brushed his knee against the console. (RT 277) He agreed that the bloody bat could also have transferred the blood. (RT 286-287) A comparison of the actual placement of the bat inside the Toyota and the blood found inside the Mazda depicts such a possibility that the bloody bat was responsible for the blood transfer inside the Mazda. (RT 287) Based on the blood evidence on the exterior of the Mazda, Conrad believed that it was the vehicle that had struck Ramirez and pushed him for 118 feet on the ground. (RT 276)

43. On the front seat of the Mazda, Conrad found a Timex Indiglo wrist-watch with a torn wristband that appears to have been "ripped" off a person's wrist, which belonged to Ramirez. (RT 278-280, 297, 297) and a black plastic holder for a motorola cell phone. (RT 281) A Nokia cell phone was found in the center console as well as a black leather case for a flip cell phone. (RT 281-282) The Nokia displayed a message containig Petitioner's nickname "Happy", and did not match the Motorola holder. (RT 282) Also inside the Mazda was a credit card issued to Jose L. Ramirez. (RT 282-284) A thorough search of the scene, the Mazda and, the Toyota turned up no trace of a neck-lace. (RT 294-297)

44. Conrad collected blood samples from Pineda's hands. (RT 296) DNA testing revealed that the blood on the undercarrage of the car was that of Ramirez (RT 385), as was the blood on the baseball bat (RT 389), the blood on the wristwatch (RT 392), and the blood on the console of the Mazda (RT 392). The blood on Pineda's hands could have been either Ramirez's or Pineda's. (RT 394-396)

45. Doctor Joseph O'Hara, a forensic pathologist for the Santa Clara County Coroner's Office reviewed the autopsy performed by Doctor Diane Vertes on Jose Luise Ramirez. (RT 206-208) He agreed with her conclusion that Ramirez's death was a result of multiple blunt force injuries, more specifically, he said that it was "crushing injuries" to the chest. (RT 208, 231-232) O'hara explained that there were three broken ribs (RT 209) at the latteral aspect of the right side of Ramirez's rib cage, four ribs up from the bottom, on the side of the right side of the torso. (RT 226) One punctured the right lung. A laceration of the right ventrical of the heart and the liver was also noted. (RT 209) This constellation of injuries are frequently refered to as "crush" type injuries but are generically described as "blunt force" injuries. (RT 209)

injuries. (RT 226-227) O'Hara explained that a vehicle running over the body could have caused these "crush" injuries (RT 209-210) but, also believed that being struck by a baseball bat or being kicked, with enough force, could have caused these injuries to the rib cage. (RT 227-226)

46. Although O'Hara could not locate any unique injuries on the body to point specifically to a car as being the mechanism of the trauma to the rib cage (RT 210,227) he believed he could make that inference based on his knowledge that a car is involved in this case. (RT 228) Accordingly, he stated that the constellation of injuries in the chest are typically seen to be caused, not by a car per se, but by some sort of heavy object heavier than a human body. (RT 228)

47. O'Hara located multiple injuries on Ramirez's body characteristic with being struck by a baseball bat. (RT 215-223) Specifically, he noted abraded linear lacerations and contusions on the head and face. (RT 215,218-219,223) Contusions on the torso, one on the left shoulder, one on the lateral right side of the mid back, a very similar one a few inches below, and three on the right side of the back. (RT 215-216) Some were lacerated. some were not. (RT 215) They were all described as being caused by blunt force impacts by a "long tree branch or a baseball bat". (RT 215,217,219) He further described these injuries as being caused by a "long heavy object" (RT 217) and that mass X force would constitute "heavy" in this case. (RT 221-222) The baseball bat taken from Ramirez's truck was consistent with the size and shape of the object that may have caused the injuries. (RT 126,221,269,271)

48. In addition to the crush injuries, O'Hara observed large abrasions which occur when skin is dragged across pavement. (RT 210-213) Ramirez also appeared to have thermal injuries on his hands and right hip. (RT 214) O'Hara opined that these occurred where his body came into contact with the hot undercarriage of the car or the exhaust system. (RT 214)

49. O'Hara noted that there were no fractures of the skull or facial bones. (RT 222) Ramirez had sustained no potentially lethal injury to the brain or head as a result of being hit with the baseball bat, leading O'hara to believe that being hit with the baseball bat did not cause Ramirez's death. (RT 223,233-234) He explained that skull fractures are typically caused by things like hammers where a lot of mass is concentrated into a very small area. (RT 222-223)

50. O'Hara stated that he was unable to form an opinion, and believed

it was impossible to do so, regarding whether Ramirez was still alive when his chest was crushed because the totality of the injuries were sustained too close in time. (RT 224-225)

51. O'Hara believed that Ramirez's injuries were consistent with a hypothetical scenario in which a person was struck eight to 10 times with a bat, fell to the ground, was hit by a car, dragged for a distance of 120 feet and, actually backed over by the same car in an attempt to disengage him. (RT 225)

52. The prosecutor's theory was that petitioner and Pineda were in agreement from the very beginning that they were going to commit a robbery together. (RT 622) He argued that from the very beginning, petitioner was acting as the getaway driver. (RT 632) He argued in the alternative however, that even if the jury believed petitioner's testimony that he only drove the car away from the scene after Pineda had returned to the scene and gotten out to get more loot, petitioner was still guilty as an aider and abettor. He argued it was clear that petitioner knew there was stolen property in the car as he fled. (RT 633-634) The prosecution argued that Pineda obviously knew that petitioner was going to drive the Mazda away from the scene while Pineda took Ramirez's truck. (RT 640) Thus, even if petitioner did not take the wheel until after the return to the scene, the jury should find that he had aided and abetted Pineda in the robbery and carjacking.

53. The Defense Case

54. Approximately two weeks before Ramirez's death, Petitioner broke his right ankle in three places. (RT 417) His leg was in a cast and was using crutches on July 10, 2003. (RT 418) Vicodin had been prescribed for pain. (RT 418)

54. On the morning of July 9, Pineda, whom he had known six to eight years and whom he considered almost a brother (RT 456), came to petitioner's home and asked him to accompany him back to San Jose. (RT 419) Petitioner did not want to go, as he was on crutches and needed help getting around. (RT 419) Nevertheless, he reluctantly agreed to go. He had his prescription filled and the two left for San Jose around 2:30 or 3:00 p.m. (RT 421)

55. Upon arrival in San Jose, the two went to Pineda's father's house. (RT 422, 519) Pineda and his father were drinking alcohol while petitioner smoked pot which he had been doing since early morning. (RT 422) At about

8:30 or 10:00 that night Pineda and petitioner went out, visiting several bars. (RT 424-426,256) They decided to get some food, but at an intersection, an intoxicated Ramirez approached the car. (RT 427-428,456-457) He was about to to shake hands with petitioner when Pineda turned the corner. (RT 427-428,457) After turning the corner, Pineda said "This guy is really drunk, I'm going to rob him." (RT 428,457,461) Petitioner told him not to, as he was on probation and did not want to get in trouble. (RT 428-429,461-462) Petitioner believed that Pineda was not really going to do anything. (RT 430,462,464)

56. Pineda pulled up to where Ramirez was walking, told him there was a party nearby, and invited him to attend. (RT 430-431,463-465,468,482) Although petitioner heard their conversation, he did not join in and was not paying attention as he was in the process of rolling a joint, which he continued to do rather than encourage or participate in what was happening. (RT 466,470) It never occurred to petitioner to warn Ramirez. (RT 431)

57. Ramirez followed Pineda and petitioner in his truck. (RT 431) As they drove, petitioner and Pineda did not have any conversation at all. (RT 482-483) Pineda directed Ramirez to park his truck in an alley. (RT 431,483) By this time, petitioner knew that Pineda was in fact going to rob Ramirez, but thought if he said nothing and did not participate, he would not be involved. (RT 464,469-470) Pineda parked the Mazda in the lane and got out of the car when Ramirez approached. (RT 432,487) The headlights were off and the engine was still running. (RT 486) Petitioner continued rolling the joint and was not paying attention to what they were doing. (RT 466-468) Pineda and Ramirez talked beside the rear of the car when suddenly the back door opened, and then petitioner heard a thump. (RT 432) Not knowing what it was, he looked back and saw Pineda hitting Ramirez with a baseball bat, hitting him perhaps eight or 10 times in the head and body. (RT 432,489,491,493)

58. Petitioner began yelling at Pineda to stop and telling him to leave Ramirez alone, but did not get out of the car to help Ramirez, thinking that if he was not involved, he would not be responsible for anything. (RT 433,490-491) He prayed. (RT 491-493) after a few seconds, petitioner looked back again and saw Pineda looking through Ramirez's pockets. (RT 434,494-495) Pineda then got in the driver's seat of the Mazda, put the bat against the console and turned the car around. (RT 434,495-496) Petitioner was scared and just wanted to get away, so it did not occur to him to help Ramirez. (RT 435)

59. Pineda pulled into the intersection, turned the light on, and looked at the items he had taken from Ramirez. (RT 436) He said "I didn't get no money. All I got was papers." (RT 436,496-497) Petitioner said nothing. (RT 436-437) Pineda then made a u-turn and returned to where Ramirez was lying, parking right next to his body. (RT 437,503-505) Petitioner did not know that Pineda intended to take Ramirez's truck. (RT 507-509) He got out of the car, and petitioner immediately got into the driver's seat, put the car in drive, and stepped on the gas, hitting Ramirez. (RT 437-439,509) He did not know that any of Ramirez's property was in the car. (RT 500-501) He did not know that Ramirez was lying in the street in front of the car because the beating had been administered by Pineda in the back of the car. (RT 510-511)

60. Petitioner was in a panic. (RT 440-441) He wanted to stop, but he saw police car lights and he left because he didn't want to go to jail. (RT 441-442) He did not know where he was or where he was going. (RT 441) Pineda was driving behind him in Ramirez's truck flashing the high beams. (RT 442) Eventually he noticed that the police were no longer following him. (RT 442-443)

61. Petitioner called his mother and asked her to come pick him up. (RT 443) He told her that the incident had arisen from a road rage scenario. (RT 458-459) He also called Pineda's father and told him that they had hit somebody. (RT 459) Pineda's father told him to get rid of the car. (RT 443) Petitioner parked the car in the parking lot of the Double Tree Hotel, took his belongings out of the car, and left on foot.

62. Feeling light-headed and fearing he was going to pass out, petitioner sat down. (RT 444-445) The cell phone rang in his pocket while he was on the telephone with his mother. (RT 445) He took the phone out of his pocket and saw that it was Pineda's phone. (RT 445) Looking at the phone he was using, he realized that it was not his phone but Ramirez's and immediately hung up. (RT 445,499) He threw Ramirez's phone in the garbage can because it was not supposed to be in his possession. (RT 444-445,500)

63. Petitioner waited an hour or two for his mother to pick him up. He had no idea what had happened to Pineda. (RT 446) When his mother arrived, he got in the car crying, but told her nothing about what had happened. (RT 447) He fell asleep in the car on the way back to Modesto. (RT 447)

64. When police officers arrived at petitioner's house that afternoon, he was not suprised. (RT 448) He voluntarily accompanied them back to San Jose, and was interviewed by Millard and Bettencourt. (RT 449) Initally, petitioner lied to them, hoping to talk his way out of it, but when they told him that Ramirez had died, he decided to tell them the truth. (RT 449-450,459-461) Petitioner was extremely distraught and remorseful. He tried to write a letter to Ramirez's family expressing these emotions, but could not think straight. (RT 450-451) Petitioner had never wanted to rob Ramirez. He had not wanted his money, cell phone, keys, truck, or creditucards. However, it never occured to him to oppose Pineda. (RT 451)

I. My conviction is Constitutionally unjust:

Ineffective assistance of counsel

COUNSEL'S PERFORMANCE AT TRIAL DEPRIVED MY RIGHT TO A FAIR TRIAL
A violation of U.S. Constitution, Amendment(s) V, VI, XIV

- a. Counsel's Failure to cross examine witness Fedele regarding his prior statements deprived my right to effective cross examination because it failed to expose invaluable facts to the jury.

Prior to trial, Fedele made a statement to Sgt. Ramirez immediately after the crime. This statement did not include a Mazda or a driver. (see page 44 of this petition)

Fedele testified at a conditional examination. (CT322-361)

Counsel did not cross examine Fedele regarding these statements at trial. (RT108-109)

Had he cross examined Fedele regarding these statements at trial certain facts could have been exposed to the jury:

1. Fedele testified that after he returned to Fifth Street with Sgt. Ramirez he saw a silver car make a u-turn at the same place and time as the officer. (CT12-13, 19-20, 31-32)
2. Fedele testified that he pointed out the silver car to Sgt. Ramirez as being the one involved. (CT13, 16, 19-20)
3. Fedele was asked to position the person he said he saw inside the silver car according to his actual observations and his left or right. He positioned the person twice at his left before changing it to twice at his right. (CT23-24)
4. Fedele was shown a photograph of the Mazda in this case. He did not recognize it. (CT18-20)
5. His initial statement did not include the silver car or a driver.

These facts at trial could have shown the jury that Fedele's statements evolved over a period of fourteen months from not including the Mazda and a driver to including it at the conditional examination but conflicting with the state's other evidence then being inconsistently removed by the time

he testified at trial.

The testimony at the conditional examination that he observed the silver car (Mazda from here on out) and Sgt. Ramirez at the same time and location would have put two officers immediately behind the vehicle. Chavez observed traveling from that direction after he saw Ramirez lying in the street already. (RT347) Had that actually occurred, according to Chavez, the officers would have witnessed Pineda exit the Mazda to approach Ramirez in the street and return to the Mazda before he went to take the truck. (349) They would have also witnessed the car hit Ramirez, or possibly prevented it. (RT349) Except neither officers testified to such a thing. Moreover, Chavez's testimony was that the officers arrived several minutes later. (RT360-361)

At trial, however, Fedele testified that he seen the Mazda make a u-turn before he flagged down Sgt. Ramirez. He said he had to go another block and a half before he located him. (RT106-109) His testimony now leaves a window of opportunity between him seeing the Mazda making a u-turn and it returning to Ramirez's location as Chavez said. Thus the confliction was inconsistently removed by the time he testified for the jury.

Fedele's testimony at the conditional examination that he actually pointed out the Mazda's involvement to the crime is conflicting with Sgt. Ramirez's and Officer Anaya's testimony. Sgt. Ramirez said that he was not suspicious of the Mazda's presence at the scene when he arrived. He said for that reason he specifically ordered Officer Beavers to stop the red SUV. (RT54-55) Officer Anaya actually stopped the Mazda but then let it go because the raider traffic from Sgt. Ramirez was that only the red SUV was involved with the victim down on Fifth Street. (RT63)

Again, at trial, this confliction was removed. Fedele said that he told Sgt. Ramirez of two vehicles' involvement. The Mazda and a "little red truck". (RT108) Now leaving the possibility that, although he told the officer of the Mazda's involvement, he chose to pursue the red SUV versus the Mazda for his own reasons.

These facts, including the positioning of the person inside the Mazda, the failed id. Of the Mazda itself, and Fedele's initial statement that does not include the Mazda or a driver, needed jury exposure. It could have

included it in determining Fedele's reliability and how much weight he should be given in its conclusion of the trial.

Counsel's actual cross examination of Fedele at trial failed to expose these facts to the jury. (RT108-109) Counsel's failure was completely unreasonable in light of the circumstances of this case.

His actual cross examination not only failed to expose these facts. It failed to expose any useful facts to the defense.

The facts that could have been exposed to the jury goes to the heart of this case. They are specific to the Mazda and a driver.

The defense theory rested upon my testimony at trial. My credibility before the jury was immeasurable to its success. Fedele's testimony specific to the Mazda and a driver untested completely undermines my credibility.

Counsel's strategic decision was to challenge State's evidence where it would implicate guilt in the robbery and carjacking charges. (RT618-633, 747-749) Fedele's testimony specific to the Mazda and a driver implicates guilt in the robbery and carjacking.

Despite his own belief in the evidence to contest it altogether, Counsel decided to request "Guilty" verdict for the murder charge as a lesser offense to request and receive "Not Guilty" verdicts for the robbery and carjacking charges. This request was unreasonable because it could not be supported by the evidence. Fedele's testimony specific to the Mazda and a driver implicates guilt as long as it remained untested as it did. (RT694-695)

Counsel's strategic decision was to argue to the jury that Fedele's testimony specific to the Mazda and a driver was unreliable. He said that he was mistaken and wrong in his observations. (RT660, 666, 697-698, 713) That was unreasonable. There was no record to support it.

The jury requested Fedele's testimony "specific to the Mazda and the location of the person inside the car". (CT502A-502E) That would prove to be pointless. There was nothing to support the defense. Counsel's actual cross examination of the witness left Fedele's testimony completely unchallenged. So the jury was forced to return a guilty verdict immediately after, as it did. Had they actually had the facts spelled out in this petition

from Fedele's prior statements to aid in its determinations there is no saying what they would have chose. They apparently wished for something to be there.

In short, I believe the proper functioning of the adversarial testing process in my case demanded that the jury be exposed to every fact available from Fedele regarding his reliability specific to the Mazda and a driver. So that it could adequately determine the weight to be given him in its final conclusion. But Counsel's actual crossexamination of him failed to expose any of the available facts. It didn't expose any useful facts. It just left Fedele's statement as it was. It failed the testing process.

It is for all these reasons that I believe counsel's failure to cross examine Fedele regarding his prior statements at trial was un reasonable. I believe it failed my actual defense. I believe it deprived my right to have effective cross examination of the witness.

Therefore, I allege, Counsel's failure to cross examine Fedele regarding his prior statements, that failed to expose the facts spelled out in this petition to the jury, was completely unreasonable in light of the circumstances of my case. It failed my defense and it deprived my right to effective cross examination.

- b. Counsel's failure to cross examine witness Chavez regarding his ability to distinguish between the passenger side of the Mazda and the driver's side deprived my right to effective crossexamination because it failed to expose invaluable fact to the jury regarding his reliability.

Chavez testified at the preliminary hearing. (CT23-44) His testimony was that he was observing the "passenger side" of the Mazda "first-hand" from his apartment window. (CT36)

Counsel's actual cross examination of this witness failed to expose this fact to the jury at trial.(rT362-366)

Had Counsel exposed this fact to the jury it would have shown that Chavez was wrong in his observation. That Chavez was mistaken to say that he seen

the "passenger" exit the Mazda.

Exhibits 1-3 at the back of this petition (pgs. 45-47) will help to illustrate the point. The facts of this case shows that Chavez resided on the east side of Fifth Street. That the Mazda was facing front-end-south. That the Mazda was always facing the same way throughout Chavez's observations. From the time it drove up through to when it fled the scene. In other words, the facts show that the side of the Mazda always facing towards Chavez's apartment building (east) was the driver's side. (People's exhibits 22-25, 34 Defendant's exhibits 101-102, RT251-267, 272-276, 287-291, 354-357, 629)

On these facts, Chavez's testimony at the preliminary hearing that he believed he was observing the "passenger side" of the Mazda "first-hand" was wrong. The driver's side was factually facing his apartment building.

Also on these facts, his testimony that he observed the person exit the Mazda from the passenger side was wrong. His belief that the passenger's side of the car is facing his window indicates that the person is exiting from the side of the car facing towards his window. That is factually the driver's side of the car.

Therefore, Chavez was mistaken to say that he actually observed the passenger exit the Mazda.

This fact needed to have been exposed to the jury. It could have included it in its determination of Chavez's reliability and how much weight to be given to him in its verdict.

Counsel's actual cross examination of Chavez failed to expose this fact to the jury at trial. (RT362-366) This failure was completely unreasonable in light of the circumstances of this case.

His actual cross examination not only failed to expose this fact. It failed to expose any useful facts.

This fact, had it been exposed, could have gone to the heart of the case. It was specific to the Mazda and a driver.

Chavez was a key prosecution witness. His testimony specific to the Mazda and a driver contradicts the defense theory.

The defense theory rested upon my testimony. It rendered my credibility immeasurable to the success of the defense. Chavez's testimony specific to

the Mazda and a driver (untested) completely undermines my credibility before the jury.

Counsel's strategic decision was to challenge State's evidence where it would implicate guilt in the robbery and carjacking charges. (RT618-633, 747-749) Chavez's testimony specific to the Mazda and a driver implicates guilt in robbery and carjacking.

Despite his own belief in the evidence to contest it altogether, Counsel decided to request a "Guilty" verdict for the murder charge as a lesser offense to request and receive "Not Guilty" verdicts for the robbery and carjacking charges. This request was unreasonable because it could not be supported by the evidence. Chavez's testimony specific to the Mazda and a driver implicates guilt so long as it remained untested. It did. (RT694-695)

Counsel's strategic decision was to argue to the jury that Chavez's testimony specific to the Mazda and a driver was unreliable. He said that he was mistaken and wrong in his observations. (RT660,666,697-698,713) That was completely unreasonable. There was nothing on record to support it.

The jury requested Chavez's testimony "specific to the Mazda and the location of the person inside the car". (CT502A-502E) ^{TO BE READ BACK} That would prove to be pointless. There was nothing to support the defense. Counsel's actual cross examination of the witness failed to elicit fact favorable to the defense. It made it so that they were forced to return a guilty verdict no matter how much it wanted to do otherwise. Had they actually had Chavez's testimony that shows he was mistaken in his observation regarding the side of the Mazda he was seeing first hand from his window there's no telling which way it would have gone.

In short, I believe that the proper functioning of the adversarial testing process in my case absolutely required the jury to be exposed to the fact that Chavez was mistaken in his observation. Its absence allowed it to reach a conclusion on less than all the facts available, but most importantly, it reached its conclusion on faulty fact. That completely undermines any reliability in its conclusion. Especially in light of the fact that it was so concerned with getting the facts right regarding the location of the person seated inside the Mazda that ^{The Jury} it took the time to have a second look

at the testimony giving it sustenance. This fact shown to have been omitted goes directly to it.

It is for this reason that I believe Counsel's failure to cross examine Chavez regarding his ability to distinguish between the sides of the Mazda at trial was ineffective and unreasonable. Perhaps the question could be put differently. Better even. The point is to get to the unexposed fact. Either way, I believe his actual cross examination of Chavez failed my defense and deprived my right to effective cross examination.

Therefore, I allege, Counsel's failure to cross examine Chavez regarding his ability to distinguish the side of the Mazda, where it failed to expose invaluable fact to the jury to aid in its determination of his reliability, was completely unreasonable in light of the circumstances of this case. It failed my defense and it deprived my right to effective cross examination.

I believe:

- c. Counsel's failure to present evidence central to the defense deprived my right to present a meaningful defense because it failed to corroborate my testimony where it could.

The following evidence could have been presented at trial:

1. replica of Ramirez's cellular phone
2. replica of Pineda's cellular phone
3. complete toll records for Ramirez's cellular phone.
for July 10, 2003 (See PG 48)
4. testimony of Erica Haynes
5. vehicle pursuit report of Officers Beavers and
Anaya for the pursuit involving the Toyota Tacoma
truck, liscense 6U05976. (See PG 49)

Counsel did not present any of this evidense at trial. (RT416-452,526)
I was the only witness and evidence presented. Had he presented the above evidence at trial;

The cell phone replicas could have shown that both phones

are flip phones and could easily be mistook for the other.

The cell phone records could show that there was a call duration that ended on Ramirez's phone at the precise moment the first incoming call came in on Pineda's phone from his father.

Erica Haynes' testimony could have shown that she was in possession of my functioning cell phone from July 9 to July 10, 2003.

The vehicle persuit report could have shown that vehicle code section 14602.1 mandates that all vehicles involved in a persuit be reported on the proper form to the Department of the California Highway Patrol. That the Toyota Tacoma truck was the only vehicle reported by the officers involved in the persuit in this case.

All of this evidence could help to establish credibility to my testimony by corroborating it with facts where it could. The vehicle persuit report could have helped to corroborate the defense theory. In other words, this evidence is central to the defense. Counsel's failure to present it at trial was unreasonable under the circumstances of this case.

His actual strategic decision was to rely exclusively upon my testimony as the defense. It rendered my credibility before the jury invaluable to its success.

Introduction of the cellular phone evidense (records and replicas) could have prevented the attack the state prosecutor made on my credibility in his closing arguement. He said that I could not be believed because I lied when I said I used Ramirez's cell phone by accident. He said that the records' absence in the trial proved that fact. (RT631,749-750) This attack on my credibility was easilly preventable. The state prosecutor subpeoned all the cellular tele phone records in this case and turned them over to the defense. (CT241-252,255-265,268-278,283,285,299-306,307) My mother went to the public defender's office inquiring into this. They told her that they were unpermitted to turn them over to her but confirmed that they did have a copy of Ramirez's telephone toll records for that day in its file. Threfore, it was completely unreasonable for counsel to fail in presenting it to the jury. Not only would it have corroborated my testimony with fact but it would have prevented the attack made by the state prosecutor.

Introduction of the persuit report could have corroborated my testimony that I was not ever involved in the robbery or carjacking. It could have shown that leaving the scene did not help Pineda to escape. The persuit report shows that they didn't consider me to be actually involved in the persuit. Otherwise they would have included the Mazda I was driving in the report. They did not. I could not find a second report for it anywhere in the discovery. This shows that, despite that fact, every thing I did immediately after leaving the scene was to obey their command. I made complete stops at the stop lights and was going under the speed limit. I stopped when ordered to by the officer. (RT114,116,117,63-64) If they would not have ordered me to procced foward, as they did, they would not only ^{HAVE} discovered that Ramirez's property was in the vehicle (credit card with his name on it), but they would have discovered that I was driving Pineda's car. They would have easilly linked him to the crime. Not only that, every time I stopped he was forced to stop too. He was following his vehicle. In effect, I was actually aiding the officers in their persuit of Pineda versus hindering it. The persuit report helps to establish that. Therefore it was completely unreasonable for Counsel to fail in presenting it.

In short, the introduction of this evidence at trial could have established a record for Counsel to effectively argue to the jury why I should be believed. It could have provided evidentiary support for his request to the jury to return with a guilty verdict for murder as a lesser offense but to return not guilty verdicts for the robbery and carjacking. Absent the record support, both of these inquiries to the jury was ineffective and unreasonable.

Therefore, I allege, Counsel's failure to present the evidence I spelled out in this petition at trial was ineffective and unreasonable in light of the circumstances of this case. It completely failed my defense and my right to have a fair trial.

- d. Counsel's actual consultation before trial was inadequate because it failed to uncover the significance of the evidence in his possession and led to its absence from my trial.

Counsel's actual consultation with me before trial was simply, the initial consultation where we met and I explained that I had made a statement to investigators. I explained that I wanted to testify at a trial if it came to that. And because I expected it would, I explained that I did not want to take any deals involving conviction of the robbery. (Carjacking was not alleged against me at this point) At a later date he came to tell me there was DNA evidence of mine found inside the Mazda. I explained how it got there. It had nothing to do with this case. At another later date he came to tell me I should accept interview with a medical examiner. I accepted. Finally, several days into trial, two days before I was to testify, he came to prepare it. He left after ten or fifteen minutes.

Counsel never disclosed that Fedele rendered testimony at the conditional examination that evolved to including me in his account. I first discovered that he would be rendering information about the Mazda and a driver the day he testified at trial. Too late to expose the inconsistencies and fact from his previous testimony and statement. Counsel's failure to discuss it with me was unreasonable.

He never discussed Chavez's testimony with me so I could never tell him of the significance of his testimony at the preliminary hearing that he believed he was seeing the passenger side first hand from his window. That was unreasonable.

He never discussed the cellular phone evidence with me. I couldn't explain the significance there either. That was unreasonable for the reasons stated earlier

He never discussed the evidence found inside the mazda with me. I couldn't explain the fact that Chavez said he seen Pineda rip something from the body and return to the opposite side of the mazda points to the wristwatch, since it was the only evidence with those "rip" distinctive marks on it. Chavez's testimony at the preliminary hearing helps to clear that up. The fact that he was mistaken as to which side the of the car the person exited. That it shows Pineda exited the driver side and returned to the passengerside with the property he took. He probably put the wrist watch there. since it was actually found there and there was no evidence of the necklace he thought it was. Similarly, it could have explained why I couldn't account for the evidence showing up on the passenger seat. As soon as he got out of the car I climbed

over the consol. When I finished I seen him walking over towards the truck. That was on the passenger side of the car. I didn't ^{SEE} ~~HIM~~ actually at the car, but Chavez did. He could have dropped the stuff there then. Counsel's failure to disscuss the evidence found in the car with me before trial failed to get that arguement some jury exposure. They could have used it in its deliberations. That was unreasonable for him to allow.

In short, his actual consultation failed to allow me to explain all the evidence I believed to be helpful to my defense. As I did throughout this petition. It failed to allow him to understand the significance of what he had and how it could possibly be presented to the jury to aid my defense's survival. It allowed all the facts explained in this petition to be absent in my trial. It failed my defense and my ability to recieve a fair trial.

Therefore, I allege, Counsel's actual consultation with me before trial was ineffective and unreasonable because it led to the failures explained in this petition. It completely failed my defense and deprived my right to a fair trial.

- e. The cumulative impact of these errors (Counsel's failures) at my trial prejudiced it because it completely undermined the proper functioning of the adversarial testing process.

This petition is ment to challenge Counsel's performance at trial altogether. It goes to show that Counsel understood his role as advocate to my defense required him to effectively challenge the state's evidence where it would implicate me in the robbery and carjacking. His every action at trial seems to indicate that he did understand. But he completely failed to make any of his inquiries effective. It began with his failure to communicate with me before trial. That led to his failures to present the meaningful evidence he already had in his possession.

I believe that prejudice should be presumed because his actual errors denied my rights to present a defense, to effective cross examination, and a fair trial in general. All of which are recognized by the U.S. Constitution

as being fundamental to the very concept of justice. A denial of any one of those rights is constitutional error of the first magnitude. However, prejudice is evident.

Fedele and Chavez were key prosecution witnesses. Their testimony specific to the Mazda and a driver implicate me in the robbery and carjacking charges. Counsel's argument to the jury that these witnesses were wrong and mistaken in their facts would be completely ineffective if there is nothing on record to prove it. Counsel's actual cross examination made it so that there was nothing to support the argument. The facts I explain could have been exposed to the jury through cross examination were specifically aimed at that. It is evidence that could show that they were unreliable in their accounts of the Mazda and where I was seated. The jury specifically requested to hear their testimony regarding that fact to be read back in its deliberations. There is no way of saying what they would have chose to do with these facts specifically aimed at their inquiry, had they had them to look at. There in lies prejudice.

Counsel's failure to present evidence to corroborate my statement added to that prejudice. I was the only witness presented for the defense. My testimony was the actual defense. Absent some proof of reliability to believe me, the jury really had no reason to. I had nothing to lose and everything to gain. Being that I was the Defendant and all. The absence of the evidence in this petition allowed that avoidable attack on my credibility by the state, as I explained earlier. In other words, the failure to present evidence armed the opponent with ammunition that could have been used as armor to the defense. That itself constituted a surrender of arms in the adversarial testing process."

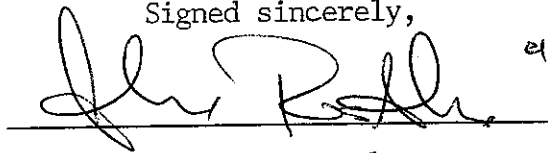
In short, the cross examination failures and the evidentiary failures combined completely compromised the proper functioning of the adversarial testing process ^{and its} ability to produce just results. It completely failed to test key prosecution witnesses and completely failed to support the defense. Both could have been prevented. Had they been, there is no telling what the jury would have chose to do. Absent any indication of reliability, they appear to have wanted to believe that I was not the driver when I said I wasn't. They went to the record to double check the evidence that said otherwise when they

went to hear Brannon's, Fedele's, and Chavez's testimony "specific to the Mazda and the location of the person inside it" to aid in their deliberations. If for nothing else, that fact goes to show, that information was heavy on the mind of the jurors. This petition is aimed at that information and has shown that at least one of the facts they relied on in its conclusion was faulty (Chavez). The presumption of correctness is undermined and therefore their verdict is lacking the foundation necessary to stand, and should not be permitted.

It is for these reasons, and all the reasons spelled out in this petition, that I humbly come to this court seeking relief.

Therefore, I allege, My conviction is Constitutionally unjust. Ineffective assistance of Counsel. Counsel's performance deprived my right to receive a fair trial. And I pray, this Court will overturn all of my convictions. To grant me a new trial. To allow me to fairly present my defense to a jury, and allow them to fully weigh it against the State's allegations. Please restore the fundamental fairness of my case.

Signed sincerely,

A handwritten signature in black ink, appearing to read "Alex J. Rosales", written over a horizontal line.

4.11.08.

Alex J. Rosales

FEDERAL REVIEW OF THIS CLAIM

IS PERMITTED

28 USC §2254 (d) (1)-(2)

1. The State's adjudication of this claim, where it did an issue-by-issue search for prejudice resulted in a decision based on an unreasonable determination of the facts, and is contrary to, and involves, an unreasonable application of clearly established federal law, as determined by The Supreme Court Of The United States.

One claim was made as the basis for relief. It was simply: Petitioner's conviction is Constitutionally unjust; Ineffective assistance of counsel; Counsel's performance at trial deprived Petitioner's right to a fair trial.

The supporting facts started with an underlined heading. It alleged the latter part of the actual claim; Counsel's performance at trial deprived Petitioner's right to a fair trial. Below that was allegation of error to support the claim. Each error was in ALL CAPS to distinguish each error from the next.

There was a capitalized sentence alleging; Absent the errors, there is a reasonable probability the fact finder would have a reasonable doubt respecting guilt. Below it, all the fact alleged to have been erroneously withheld as a result of Counsel's actual performance was summarized as "evidence" that could have altered the entire evidentiary picture, if it were believed by the jury.

In other words, nothing in the petition indicates that the error was to stand alone when it came to prejudice. To the contrary, the allegation "absent the errors...the fact finder would have...had doubt respecting guilt", with error being plural, clearly indicates their cumulative effect is the basis for relief. As does the singular ground for relief, in the appropriate space provided by the application itself.

The state court's adjudication of the claim is based on an issue-by-issue

search for prejudice.

It made a finding that the first contention went to a question of Counsel's failure to question Fedele regarding when he saw the Mazda make a u-turn and concluded that even if Counsel had established an inconsistency in his trial testimony.."it would not have made a difference in the result."

It found second, "[t]here was nothing establishing that Chavez could not distinguish between the passenger side of the car and the driver's side."

Lastly, it found that "[t]here is nothing showing that his defense attorney was inadequately prepared at trial because he did not meet with petitioner more often."

The petition requires a cumulative impact determination of prejudice for proper litigation. As this petition shows, it was formatted to fit that premise. It is permitted by law.(Alcala v. Woodford, 334 F.3d 862,883, Harris v. Wood, 64 F.3d 1432,1438, and Ceja v. Stewart, 97 F.3d 1246)

Therefore the state court's adjudication of the claim is based on an unreasonable determination of fact in light of the evidence presented. Permitting further federal review of it.

On the same facts, the adjudication appears to be contrary to Strickland v. Washington, 466 US 668 as interpreted by Lockheart v. Fretwell, 113 S.ct.838 and supported by Wilson v Henry, 185 F.3d 986. It fails to look to whether the fundamental fairness or the proper functioning of the adversarial testing process was undermined as a result of the cumulative impact of the error.

Had the state court actually looked to the cumulative impact of the error it would have noticed that the error goes to alter the entire evidentiary picture and a verdict only weakly supported by the record.

An honest, close look to the record shows that this case was essentially a credibility contest between the state's witnesses and myself. The remaining circumstantial evidence could follow either side. For a quick example, look to the closing arguments by counsel. They focus heavily on the testimony of their own witnesses account of the night in question.

The petition before the state court shows that fact exists pertaining to two of the state's key witnesses, Chavez and Fedele. It shows that none of it was exposed to the jury for resolution as a result of counsel's actual

cross examination of the witness at trial. It shows that counsel's actual cross examination of Chavez failed to expose fact that would prove his testimony at trial contained faulty fact. It shows that the jury was very interested in Chavez's testimony, specific to the Mazda and the location of the person inside it, that it actually requested a second look at it. It shows that the fact left out of Chavez's testimony at trial goes directly to its inquiry. It shows the same for Fedele.

The petition also showed facts of omitted evidence that could have corroborated the defense's only witness's testimony. It shows that the only witness was actually the entire case for the defense. That his testimony was the extent of its evidence.

It showed that both, failure to expose invaluable fact pertaining to the state's witnesses and the omitted evidence to corroborate the defense, was a result of counsel's actual consultation with me. It showed that he never discussed any thing with me to help him to understand the significance of the evidence in his possession. That led to its absence at my trial.

In short, it showed that counsel's every action would amount to my defense being completely meaningless at trial.

It is for these reasons that the state court's issue by issue search for prejudice is ineffective in observing the actual prejudice. The errors by themselves might not have amounted to much in their perspective but their cumulative impact on the trial itself is what I hoped they would see. Their failure to look to it failed to look to the fundamental fairness and the proper functioning of the adversarial testing process. For that reason their adjudication of the claim is contrary to clearly established federal law, as interpreted by *Strickland v Washington* 466 US 668 and *Lockheart v Fretwell* 113 S.ct. 838. Supported by *Wilson v Henry* 185 F.3d 986. Allowing for further federal review of this claim.

2. The state court's finding that the first contention goes to a question of counsel's failure to question witness Fedele about the time he seen the U-turn is based on an unreasonable determination of the facts.
(lines 4-13 of page two)

Nothing in the petition was to stand alone, above, or below the next error. But, even assuming that each ALL CAPS allegation was ment to stand alone, as the state court did, it could not reasonably be understood that the question goes to whether counsel's failure to question Fedele about the U-turn is the actual contention made by the first ALL CAPS allegation. It is in fact, Counsel's failure to cross examine Fedele regarding his prior inconsistent statements before the jury deprived petitioner's right to effective cross examination. It makes it clear that the question goes to "statements" and counsel's failure to cross examine the witness about them.

Reading further into the two All CAPS statements reserved for Fedele shows exactly what is ment by "inconsistent statements". It points out four specific areas in Fedele's prior hearing statement and points out that he made an initial statement to investigating officers that did not include mention of a mazda or a third person at the scene. The explanation was that all of the pointed out facts needed adequate jury exposure.

Therefore the state courts finding that the contention made in the petition was a question going to whether counsel's failure to question Fedele about the U-turn was ineffective assistance or not is based on an unreasonable determination of the facts in light of the evidence presented. Allowing for federal review of the claim.

3. The state court's finding that even if counsel had established a contradiction in Fedele's statements "[t]he jury could choose to believe Fedele's testimony at trial in light of the testimony of other witnesses at trial." is based on an unreasonable determination of the facts.

There were a total of four witnesses that rendered testimony specific to the Mazda and the location of the person inside it. Brannon, Fedele, Chavez, and Huang.

Brannon's testimony was simply that she seen the Mazda and the driver's side door was open. That seems to indicate that either the driver was getting into the vehicle, getting out the vehicle, or already out of the vehicle.

In light of the fact that I had a broken ankle and was restricted to the use of crutches for mobility that night and the fact that there is no evidence showing otherwise, it is reasonably understood that it could not have been me doing either of those things with the driver's side door.

The jury requested the court read back the testimony of Chavez, Fedele, and Brannon "specific to the mazda and the location of the person inside." (CT502A-E) They did not include witness Huang in their request. That seems to indicate that they either believed her to be entirely credible and they didn't need to rehear it, or they believed her to be entirely unreliable. An honest, close look to the record will support the latter.

These facts are fundamental to the proper litigation of the petition before the state court. Either it did not observe them or they completely ignored them. The jury request was pointed out on page 1 and page 21 of the petition in paragraph 1 and 105. The rest was included in the facts the conviction is based upon, starting on page 3.

The actual petition itself showed that there was fact from Fedele and Chavez specific to the Mazda and the location of the person inside it. That is the purpose of the petition. To show that they exist but were not exposed to the jury as a result of counsel's ineffective crossexamination of them at trial. He failed to elicit it.

In short, The petition shows that fact regarding the inquiry made by the jury, specific to the Mazda and location of the person inside, was withheld from the jury for two of the three witnesses it was concerned with and the the third one, Brannon, doesn't provide damaging information toward me. The only other witness rendering information against me was Huang but it appears that the jury didn't believe her. The fact omitted was directly related to their inquiry. It was specific to the Mazda and a driver.

Therefore, the state court's finding that despite the contradiction, the jury could still choose to believe Fedele's testimony at trial in light of the testimony of other witnesses at trial is based on an unreasonable determination of the facts. Permitting federal review of this claim.

4. The state court's finding regarding Chavez that there was nothing establishing that he could not distinguish between the passenger side of the car

and the driver's side is based on an unreasonable determination of the facts.

The allegation made regarding Chavez is not to show that he "could not" distinguish between the sides of the car. It is to show that his testimony at the preliminary hearing rendered indispensable fact regarding the Mazda and the location of the person inside it. It is to show that counsel's failure to cross examine him regarding how he could tell what side he was looking at from his window failed to elicit that testimony, or similar testimony. It was to show that had he elicited it, there could have been evidence on the record to show that Chavez thought the "passenger" side of the car was facing his window and he made his account of his observations on that fact. It was to show that that fact was incorrect. That the side of the Mazda facing his window was in fact the driver's side. Evidence and explanation was presented to prove it. Perhaps the argument was in artfully presented but the facts could not have been clearer. There were even diagrams to illustrate the fact.

The point is that Chavez was a key witness in the trial. His testimony specific to the mazda and the side of the car he believed he was looking at is what the state used to argue to the jury that evidence pointed toward guilt. Chavez said I was the driver of the Mazda as it drove up and he knew simply because someone exited on the passengerside. His belief in which side of the car was facing his window completely alters that fact. It was wrong.

The state court's determination completely fails to observe these facts. Instead of finding whether the evidence existed at the hearing and whether it should have been included in the trial, it appears to decide that the testimony does not show that Chavez "could not" distinguish between the sides.

However, as explained above, that is not the purpose of the petition nor is it what the evidence points to. Therefore, the state court's finding here is based on an unreasonable determination of the facts in light of the evidence presented. Permitting federal review of this claim.

5. The state court's finding that there is nothing showing that the defense attorney was inadequately prepared at trial because he did not meet with

petitioner more often is based on an unreasonable determination of the facts.

The petition before the state court showed facts that existed prior to trial regarding two key state prosecution witnesses. It showed that the fact was aimed directly at their credibility. It showed that at least one of the facts was entirely incorrect but, none of them were exposed at trial. It showed that the jury was very interested in these facts. That it actually requested the witnesses' testimony specific to these facts to be read back in jury deliberation. It showed that these facts were not included in that deliberation.

The petition also showed that fact existed that could have corroborated the defense's only witness' testimony but, it was not presented at trial. It showed that this evidence was available before trial. It showed that there was no actual corroboration for the defense's only witness' testimony present at trial as a result of the actual defense counsel put on.

The petition showed that all of this evidence, including the credibility evidence of the state witnesses, was already in counsel's possession before trial.

The allegation was that because counsel failed to visit with me enough to actually discuss the evidence turned over to him by the state, he could not have fully understood the significance of the evidence he had. That if he had come to discuss it with me, I would have pointed out the evidence as I did in the petition. Because he did not, it was completely absent at my trial.

I do not know of any "actual" or "real" way of showing that counsel's consultation with me was inadequate other than to do as I have. To show that the evidence existed, that it was in his possession all along, that it was not at trial, and that I recognized it immediately when I saw it. If he would have allowed me to go over the evidence prior to trial I would have noticed its significance then too and I would have pointed it out to counsel had he just come to discuss it with me. The evidence is not trivial. It goes straight to the core of this case.

Therefore, the state court's finding that there was nothing showing that counsel was inadequately prepared at trial as a result of his actual consultation before trial is based on an unreasonable determination of the facts in light of the evidence presented. Permitting federal review of this claim.

6. The state's adjudication of this claim, where it wants a showing of prejudice for the denied effective cross examination of two key prosecution witnesses is contrary to clearly established federal law, as determined by the Supreme Court of the United States, and is based on an unreasonable determination of the facts in light of the evidence presented.

The petition before the state court shows that evidence relating to the credibility of two key state witnesses exists but was not exposed to the jury. The court acknowledged it with its determination that despite the fact that the evidence exists, it would not have effected the out come of the trial because "[t]he jury could chose to believe Fedele's testimony at trial in light of the testimony of other witnesses at trial". And that "[t]here was nothing establishing that Chavez could not distinguish between the passenger side of the car and the driver's side".

The question before the court was whether counsel's failure to cross examine these witnesses to elicit the omitted fact at trial constituted a deprivation of effective cross examination.

As explained earlier in this petition, the state court's findings in general are based on an unreasonable determination of the facts in light of the evidence presented, but the actual findings here show that it is also contrary to Davis v Alaska ^{94 S.Ct 1105} 415, US 308. The court there explained that denied right to effective cross examination would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it. The court explained that counsels actual cross examination was limited and failed to allow an effective inquiry to the jury that a witness might be biased because he failed to make a record to base the inquiry on. It explained that the jury might not believe him other wise and in stead think he was engaged

in baseless line of attack on an apparently blameless witness. The court found that that constituted denial of effective cross examination and prejudice is a presumed result. (415 US 308, 318 94 S.Ct. 1105, 1111)

Those facts are identical to this case except the cause of the limited cross examination actually performed. There, it appears to have been due to judicial discretion, here however it was due to counsel's actions. His failure to avail himself the evidence in his possession and allow it to aid in his cross examination. The result is the same. Both counsel fail to establish a record to support inquiry to the jury that the witness is less than reliable as a result of their actual cross examination of the witness before the jury. The court said that when that happens it denies the defendant his right to effective cross examination and prejudice is a presumed result. (415 US 308, 318, 94 S.Ct. 1111)

The court in this case decided that despite the fact that counsel failed to establish the facts at trial, the result would have been the same. That finding is contrary to the Supreme Court's finding on similar facts, as stated above, and therefore allows further federal review of this claim.

What's unique about this case is that everything in the petition before the state court that is shown to have been withheld from trial is specific to the Mazda and the location of the person inside it. The fact is, the jury actually requested a second look at both these witnesses' testimony during its deliberations specific to the Mazda and the location of the person inside it. That shows that this information was heavy in the minds of the jurors and any attempt of a reviewing court to decide what the jury would have done, whether it would have changed their minds, had they had this extra information

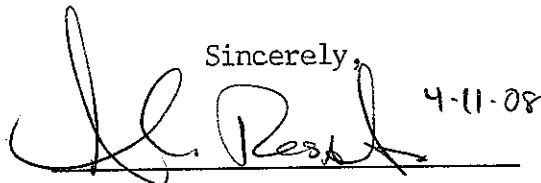
to weigh against what they already had, would completely usurp their role as the sole trier of fact and credibility. And yet, that is exactly what the court appears to have done. Therefore, the state court's adjudication of this claim is also contrary to clearly established federal law, as determined by *Sullivan v Louisiana* 113 S.Ct. 2078 and *United States v Scheffer* 118 S.Ct. 1261 because it completely invades the sole province of the jury. Permitting federal review of this claim.

7. The state court's adjudication of this claim failed to include, and resolve, all of the information presented.

The petition was presented as a single claim but included several key parts to support it. The state court attempted to resolve three out of those four but based its conclusion on an unreasonable determination of the facts as explained in the first six parts of this petition. But it is also deficient because it completely failed to adjudicate the section in the petition before it alleging that counsel failed to present evidence favorable to the defense.(starting on pg. 32 and ending at 35)

That section is important to the proper litigation of the claim because the claim alleges that counsel's performance deprived my right to receive a fair trial and alleges that all the error as a whole amounted to deficient performance and would have effected the outcome. Aside from that, the evidence absent from trial goes to corroborate the defense. There was no other evidence presented at trial to support the defense. The petition alleges that counsel's failure to present the evidence failed my right to presenting a meaningful defense.

Therefore the state court's adjudication of this claim is based on an unreasonable determination of the facts in light of the evidence presented. Allowing for federal review of this claim.

Sincerely,

Alex J. Rosales

California State University Police
San Jose State University
INCIDENT REPORT

NARRATIVE

Report Agency Assist
Type

One Washington Square, San Jose, California 95128

Case 03-1149

LOCATION OF ORIGINAL INCIDENT (IF KNOWN)

Number

475 So. Fifth Street

Released for:

VICTIM'S NAME: LAST, FIRST, MIDDLE (FIRM, IF BUSINESS) () STUDENT
Ramirez Jose Luis () EMPLOYEE

By: _____

Date: _____

INVESTIGATION:**DO NOT DUPLICATE**

On 7/10/2003 at about 0100 hours, I was at the corner of So. Sixth Street and E. San Salvador Street when I was flagged down by a W/M/A on a bicycle. The W/M/A (later identified as Rodney Fedele) reported that there was "someone getting beat up with a bat" about three streets down (West from So. Sixth Street). I immediately drove west on E. San Salvador to So. Fourth Street and W-1 Fedele yelled and said "you went too far." I backed up to So. Fifth Street and went southbound. I advised dispatch of the possible assault that had just occurred. As I drove south on Fifth Street from E. San Salvador Street, I saw the head lights of two vehicles. The vehicles went into reverse, made a U-turn and then went westbound on E. William Street. I saw that one of the vehicles was a red SUV type vehicle. I drove south to about mid block on South Fifth Street and located a latino male adult laying face down with his hands at his sides. The victim was approximately 7 feet from the west side curb line (east of 475 So. Fifth Street). There was a large puddle of blood around the victim's head and I saw that his chest was moving up and down with heavy breathing. I advised dispatch of the person down and to send the fire department and paramedics. Officer Beavers was following behind me and he went in pursuit after the possible suspect vehicles. Officer Beavers asked for the description of the suspect vehicle and I advised him that the suspect vehicle was possibly a red SUV type. Officer Beavers went west bound on E. William Street and found a red truck with a camper shell stopped at the Fourth Street traffic lights. Officer Beavers attempted to stop the vehicle, however, a pursuit ensued (see Officer Beaver's and Officer Anaya's supplemental reports).

I stayed with the Victim who was identified as Jose Luis Ramirez. V- Ramirez was bleeding profusely from multiple, head wounds. Ramirez was moaning slightly and breathing with difficulty. I reassured him and told him that help was on its way and to keep breathing for me. I told dispatch to call San Jose PD for assistance. At 0116 hours, Fire Engine 3 arrived and examined the victim. Capt. David Jimenez asked for the victim information and I relayed the information by showing him the victims ID card (I found the victims information in his right rear pants pocket.). Capt. Jimenez saw the victim and said that he may have been "dragged" for a distance. V-Ramirez stopped breathing and Fire personnel began CPR procedures. AMR unit 643 transported Ramirez to San Jose ER where he was subsequently pronounced dead by medical authorities (see Officer Anaya's supplemental report). I contacted W-1 Fedele at the scene and I asked him again what he had seen. Fedele said that he was riding his bike So. Fifth Street near William Street when he heard an argument about 75 feet north of where he stood. Fedele said he saw a male subject beating someone with a baseball bat. Fedele said that he did not want to get any closer for fear of being beaten by the suspect. I asked Fedele if he was able to identify any of the suspects. Fedele said "No"

At about 0140 hours, California Highway Patrol Officer Barret # 16484 and Price #17319 arrived and offered to assist me. I asked them to set up a perimeter and to block off each street

RECORDING OFFICER NAME

ID NUMBER

DATE

TEAM

SUPERVISOR REVIEW

DATE

PAGE:

Ramirez

R6744

7/10/03

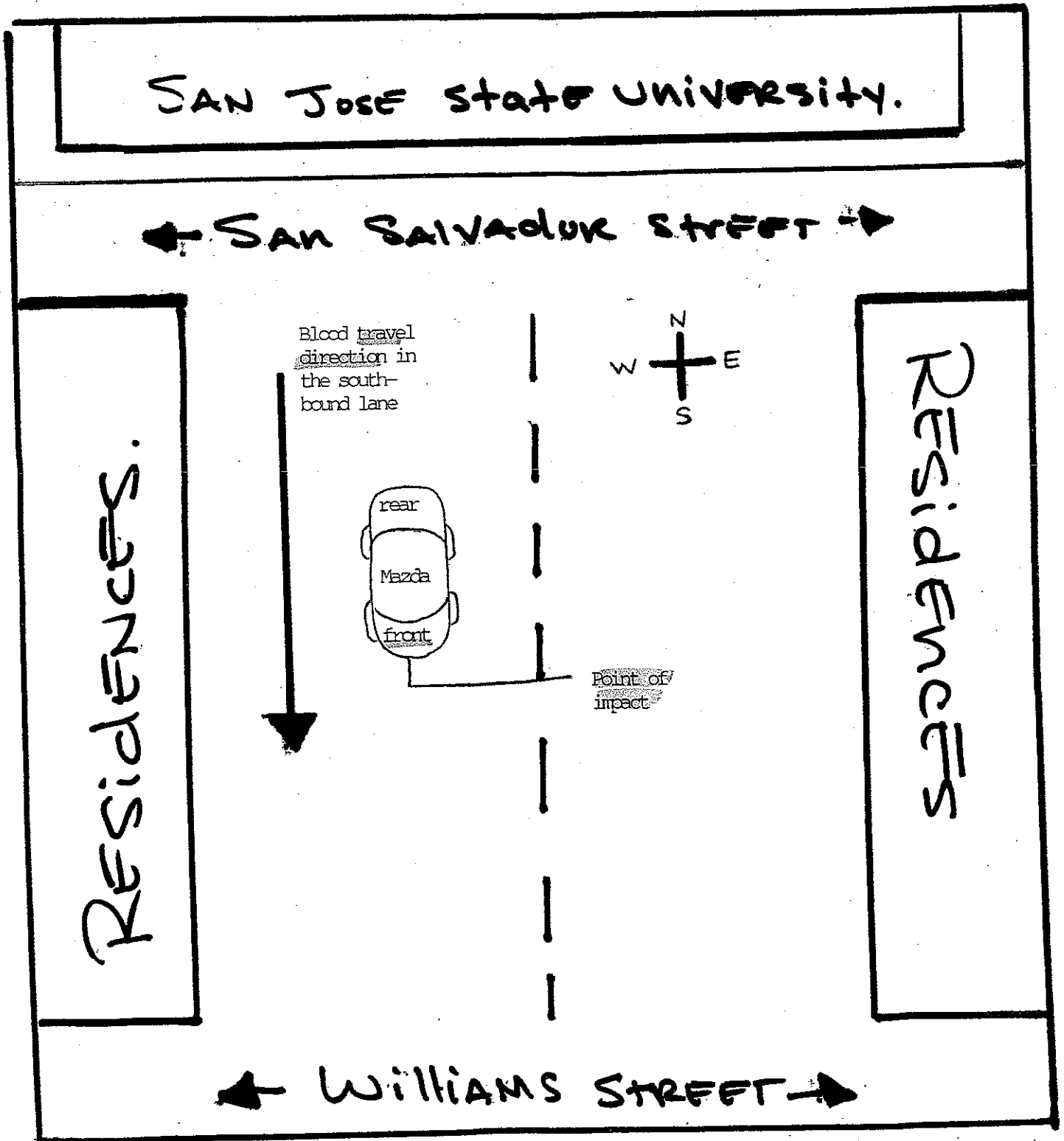
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PETITIONER'S EXHIBIT 1

Diagram of Fifth Street derived from Officer Conrad's testimony at trial
(RT 251-267, 272-276, 287-291)
With the Mazda in place

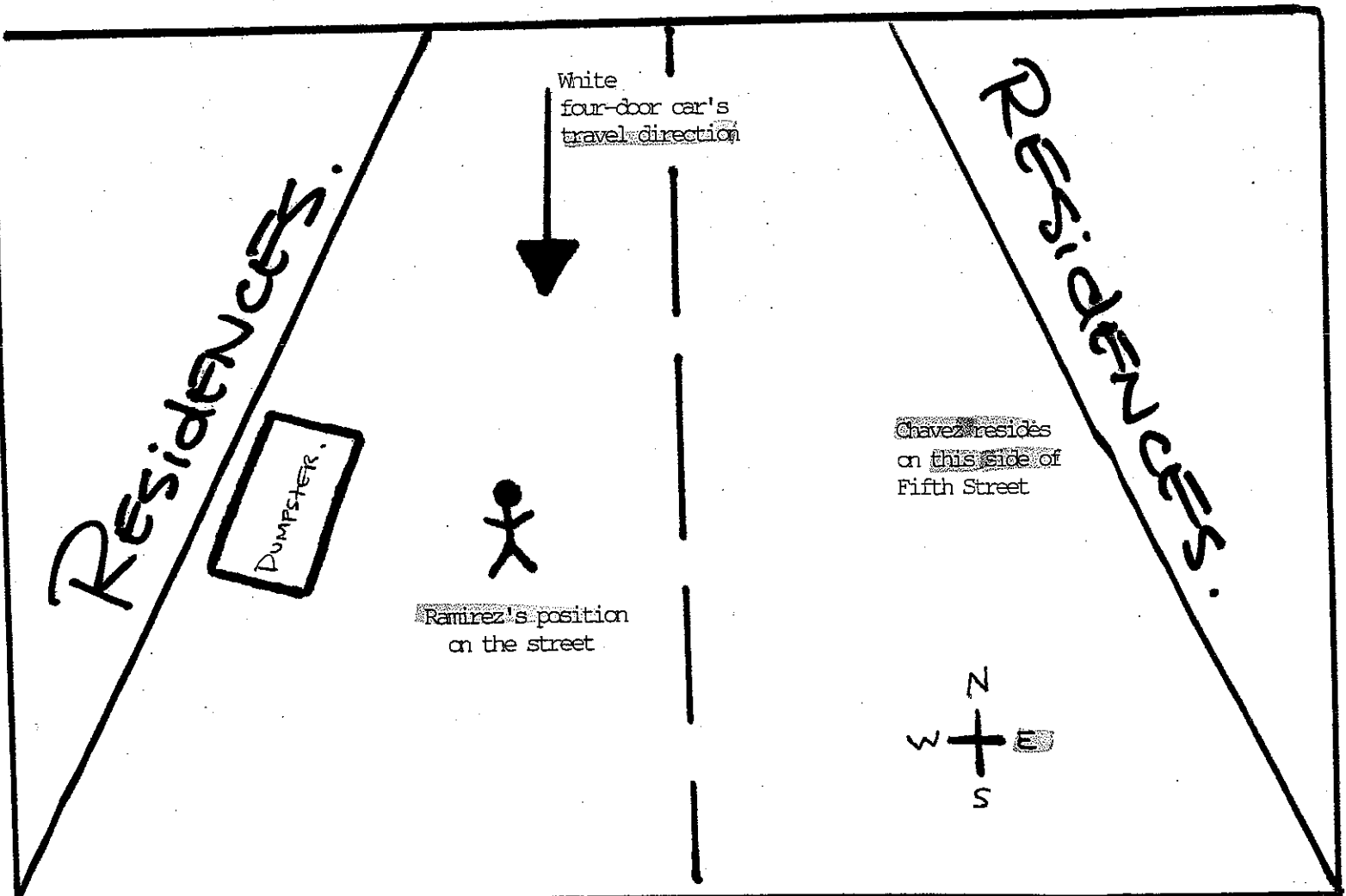


PETITIONER'S EXHIBIT 2

Diagram of Fifth Street with San Salvador at the top

derived from Chavez's testimony at trial

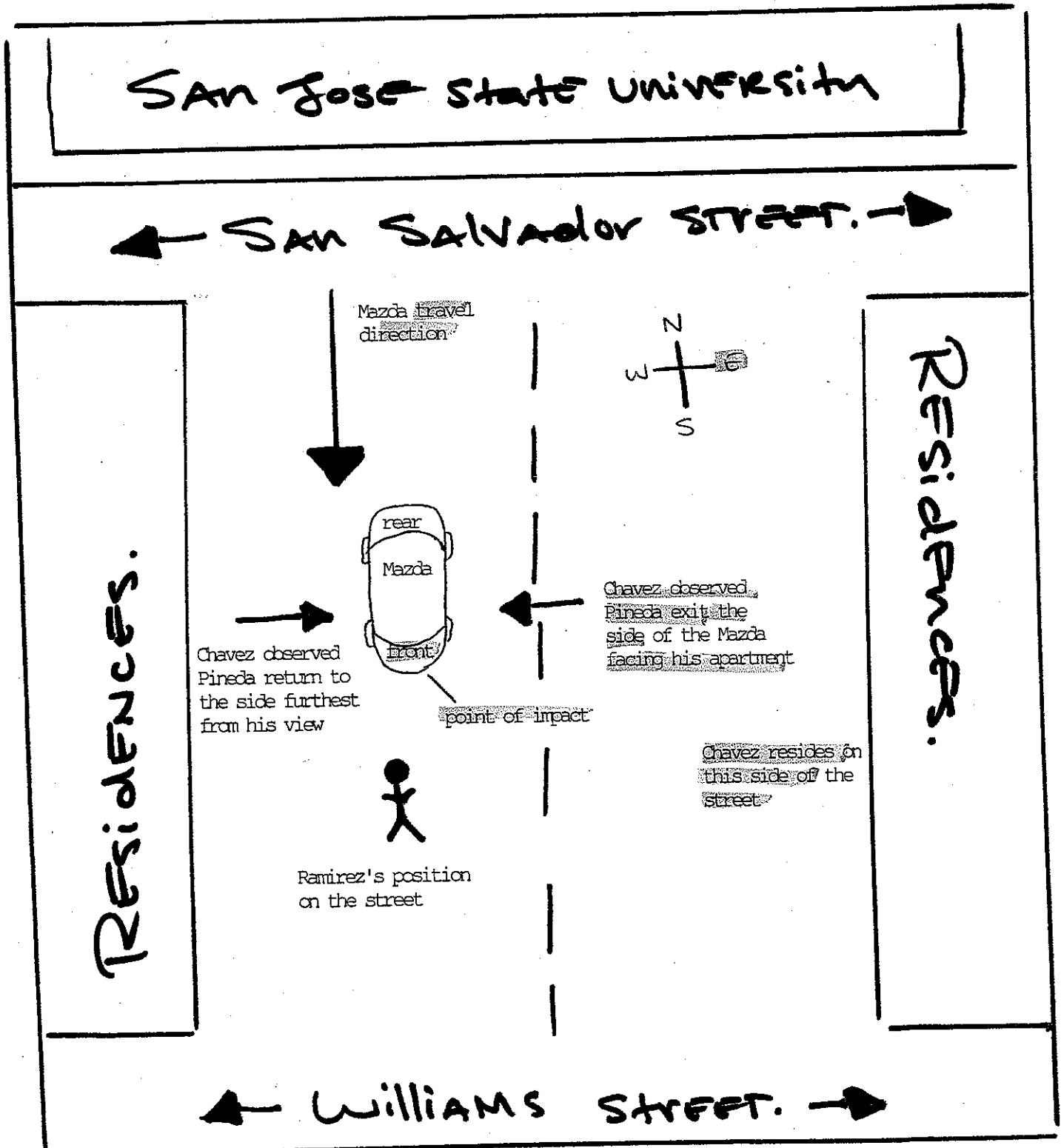
(RT 345-347)



PETITIONER'S EXHIBIT 3

Diagram of Fifth Street derived from Officer Conrad's testimony at trial
and Chavez's testimony at the preliminary examination
and at trial

(RT 251-267, 272-276, 287-291, 345-347, Ct 36-37)



DECLARATION

I Gloria A. Sandoval, hereby declare that I recieved the partial case files for case #CC319535, from an associate of the Santa Clara County Public Defender's Office located at 120 West Mission Street in San Jose, California 95110, on or about January 19, 2007.

I was thereby notified that there was a copy of Jose Luise Ramirez's cellular phone toll records for July 10, 2003.

The name of the associate was Ken Mendal.

Dated 3/23/07

Signed Gloria A. Sandoval

Contact info.

Gloria A. Sandoval
3217 Woodstock ct.
modesto, ca. 95354
Home: 209-577-2526
Cell: 209-484-5104

CHP 187 (Rev 2-94) OPI 044

IMPORTANT - READ CAREFULLY

NUMBER - For CHP Use Only

NUMBER - Other Agency Use Only

03-1149

Vehicle Code Section 14602.1 requires that "every state and local law enforcement agency, including, but not limited to, city police departments and county sheriff's offices, shall report to the Department of the California Highway Patrol, on an approved form, all vehicle pursuit data." This form has been developed to record information.

The definition of "vehicle pursuit" and instructions for completing and submitting this form are on the reverse.

SECTION I - THIS SECTION IS MANDATORY FOR ALL CALIFORNIA LAW ENFORCEMENT AGENCIES

A. CHP AREA/AGENCY NAME <u>CSUPD SAN JOSE</u>	B. AGENCY NCIC <u>0141317</u>	C. DATE OF PURSUIT <u>7-10-03</u>	D. TIME OF PURSUIT <u>0103 HRS</u>	E. TOTAL TIME OF PURSUIT (Minutes) <u>6 MINUTES</u>															
F. DID YOUR AGENCY/AREA INITIATE THE PURSUIT? a <input checked="" type="checkbox"/> Yes b <input type="checkbox"/> No	G. I.D. NUMBERS OF OFFICERS INVOLVED (Do Not List Names) <u>B085B 1A4436</u>																		
H. IF THE SUSPECT WAS <input checked="" type="checkbox"/> WAS NOT <input type="checkbox"/> APPREHENDED, WHICH ONE OF THE FOLLOWING MOST NEARLY DESCRIBES THE EVENT TERMINATING THE PURSUIT?																			
a <input checked="" type="checkbox"/> Pursued driver voluntarily stopped b <input type="checkbox"/> Forceful stop c <input type="checkbox"/> Pursued vehicle became disabled d <input type="checkbox"/> Pursuing vehicle became disabled e <input type="checkbox"/> Pursuit aborted by law enforcement agency f <input type="checkbox"/> Pursued vehicle and pursuing vehicle collided g <input type="checkbox"/> Pursued vehicle involved in collision h <input type="checkbox"/> Pursuing vehicle became involved in collision i <input type="checkbox"/> Pursuit continued by allied agency j <input type="checkbox"/> Pursued vehicle escaped pursuing vehicles k <input type="checkbox"/> Other:																			
I. ORIGINAL VIOLATION OBSERVED BY AGENCY INITIATING THE PURSUIT SECTION: <u>245 P.C.</u> CODE: <u>P.C.</u> a <input checked="" type="checkbox"/> Felony b <input type="checkbox"/> Misdemeanor c <input type="checkbox"/> Infraction d <input type="checkbox"/> Other:																			
J. MOST SERIOUS VIOLATION SUSPECT(S) CHARGED WITH UPON TERMINATION OF THE PURSUIT SECTION: <u>187</u> CODE: <u>P.C.</u> a <input checked="" type="checkbox"/> Felony b <input type="checkbox"/> Misdemeanor c <input type="checkbox"/> Infraction d <input type="checkbox"/> Other:																			
K. WERE THERE ANY INJURIES INCURRED AS A RESULT OF A COLLISION? a <input type="checkbox"/> Yes b <input checked="" type="checkbox"/> No If yes, indicate the number of each type of injury:																			
<table border="1"> <thead> <tr> <th>Police Officer(s)</th> <th>Suspect(s)</th> <th>Other(s)</th> </tr> </thead> <tbody> <tr> <td>Fatal Injury</td> <td></td> <td></td> </tr> <tr> <td>Severe Injury</td> <td></td> <td></td> </tr> <tr> <td>Other Visible Injury</td> <td></td> <td></td> </tr> <tr> <td>Complaint of Pain</td> <td></td> <td></td> </tr> </tbody> </table>					Police Officer(s)	Suspect(s)	Other(s)	Fatal Injury			Severe Injury			Other Visible Injury			Complaint of Pain		
Police Officer(s)	Suspect(s)	Other(s)																	
Fatal Injury																			
Severe Injury																			
Other Visible Injury																			
Complaint of Pain																			
L. WERE ANY INJURIES INCURRED AFTER THE VEHICLE PURSUIT? a <input type="checkbox"/> Yes b <input checked="" type="checkbox"/> No If yes, indicate the number of each type of injury:																			
<table border="1"> <thead> <tr> <th>Police Officer(s)</th> <th>Suspect(s)</th> <th>Other(s)</th> </tr> </thead> <tbody> <tr> <td>Fatal Injury</td> <td></td> <td></td> </tr> <tr> <td>Severe Injury</td> <td></td> <td></td> </tr> <tr> <td>Other Visible Injury</td> <td></td> <td></td> </tr> <tr> <td>Complaint of Pain</td> <td></td> <td></td> </tr> </tbody> </table>					Police Officer(s)	Suspect(s)	Other(s)	Fatal Injury			Severe Injury			Other Visible Injury			Complaint of Pain		
Police Officer(s)	Suspect(s)	Other(s)																	
Fatal Injury																			
Severe Injury																			
Other Visible Injury																			
Complaint of Pain																			

SECTION II - THIS SECTION IS MANDATORY FOR CHP

M. LOCATION AND/OR ROUTE(S) <u>WIB E. WILLIAMS, WIB 3 RD ST, ELK SAN CARLOS S/B 4TH ST, WIB 2 RD S/B 27, WIB (ELK), WIB WILLOW S/B 27, L</u>			
N. AGENCY INITIATING THE PURSUIT <u>CSUPD SAN JOSE</u>	O. CHP PARTICIPATION REQUESTED? a <input type="checkbox"/> Yes b <input checked="" type="checkbox"/> No c <input type="checkbox"/> N/A	P. NAME OF REQUESTING PERSON <u>6</u>	
Q. NAME OF SUPERVISOR IN CHARGE <u>SGT. ANDRE RAMIREZ</u>	R. TIME NOTIFIED <u>0103 HRS</u>	S. SUPERVISORY INVOLVEMENT IN PURSUIT a <input type="checkbox"/> In Pursuit b <input checked="" type="checkbox"/> Via Radio c <input type="checkbox"/> Via Telephone d <input type="checkbox"/> None	
T. HIGHEST NUMBER OF CHP UNITS IN PURSUIT AT ONE TIME <u>Ground</u> <u>Air</u>	U. NUMBER OF ALLIED AGENCY UNITS INVOLVED <u>Ground 2</u> <u>Air</u>	V. OTHER CHP AREAS INVOLVED	
W. TOTAL PURSUIT LENGTH (Distance) <u>3.5 MILES</u>	X. ROADWAY TYPE - MAXIMUM SPEED ATTAINED <input type="checkbox"/> Maximum Freeway Speed: <u>60</u> <input type="checkbox"/> Maximum Surface Street Speed: <u>65</u>		
Y. IF THE "YES" BOX WAS CHECKED FOR SECTION "K" ABOVE, COMPLETE THE FOLLOWING BOXES REGARDING THE COLLISION a <input type="checkbox"/> CHP involved b <input type="checkbox"/> Other law enforcement agency involved c <input type="checkbox"/> Pursued vehicle involved d <input type="checkbox"/> Other party involved			
Z. TYPE OF FORCIBLE STOP IMPLEMENTED: a <input checked="" type="checkbox"/> None b <input type="checkbox"/> Spike Strip c <input type="checkbox"/> Roadblock d <input type="checkbox"/> Ramming e <input type="checkbox"/> Channelization f <input type="checkbox"/> Other			
AA. CHP GUIDELINES FOLLOWED? a <input type="checkbox"/> Yes b <input type="checkbox"/> No	BB. DAMAGE TO EQUIPMENT? a <input type="checkbox"/> Yes b <input checked="" type="checkbox"/> No	CC. INJURY TO CHP PERSONNEL? a <input type="checkbox"/> Yes b <input type="checkbox"/> No	
DD. SUSPECT NAME(S) <u>SERGEANT TIMOTHY PINOCHA</u>			
EE. SUSPECT STATUS a <input checked="" type="checkbox"/> In-custody b <input type="checkbox"/> Released	FF. EVADED ARREST BY: a <input checked="" type="checkbox"/> In Vehicle b <input type="checkbox"/> On Foot c <input type="checkbox"/> Other:		
GG. PURSUED VEHICLE TYPE: a <input type="checkbox"/> Automobile b <input type="checkbox"/> Truck Tractor/Trailer c <input type="checkbox"/> Motorcycle d <input checked="" type="checkbox"/> Pickup/Van e <input type="checkbox"/> Other	HH. YEAR <u>1998</u>	II. MAKE <u>TOYOTA</u>	JJ. MODEL <u>TACOMA</u>
KK. LICENSE <u>6005476</u>			
FORMS ATTACHED: <input type="checkbox"/> CHP 555 <input type="checkbox"/> CHP 202 <input type="checkbox"/> CHP 208 <input type="checkbox"/> STD 270 <input type="checkbox"/> STD 288			
COPY OF CHP 187 FORWARDED TO: <input type="checkbox"/> Production Controls <input type="checkbox"/> Division			
SUPERVISOR'S SIGNATURE		COMMANDER'S SIGNATURE	
		DIVISION APPROVAL	

49

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

FILED

MAY 09 2007

KIRI TORRE
Chief Executive Officer
Superior Court of CA County of Santa Clara
BY [Signature] DEPUTY

In re)
ALEX ROSALES) No. CC319535
)
)
On Habeas Corpus)
)

O R D E R

ALEX ROSALES ("Petitioner") petitions for a writ of habeas corpus. Petitioner contends his trial counsel was ineffective.

In order to demonstrate ineffective assistance of counsel, a defendant must show (1) that his or her counsel's performance was deficient because the lawyer's representation fell below an objective standard of reasonableness under prevailing professional norms and (2) counsel's deficient performance subjected the defendant to prejudice, i.e., there is a reasonable probability that, but for counsel's failings, the result would have been more favorable to the defendant. (Strickland v. Washington (1984) 466 U.S. 668, 687-688, cited in In Re Harris (1993) 5 Cal.4th at 832-833; In Re Alvernas (1992) 2 Cal.4th 924, 936-937 and People v. Haskett (1990) 52 Cal.3d 210, 248.)

Our high court has stated "a defendant's self-serving statement after [] conviction, and sentence [], is insufficient in and of itself to sustain the defendant's burden of proof as to prejudice, and must

1 be corroborated independently by objective evidence. A contrary
2 holding would lead to an unchecked flow of easily fabricated claims."
3 (In re Alvernaz (1992) 2 Cal.4th 924, 938.)

4 Petitioner herein has failed to show ineffective assistance.
5 Petitioner contends his attorney failed to adequately cross-examine
6 certain witnesses during his trial. Petitioner first contends that
7 his attorney failed to question witness Fedele as to when he saw the
8 Mazda make a U-turn. Even if the petitioner's attorney had
9 established that Fedele at the preliminary hearing stated he saw the
10 Mazda make a U-turn after he flagged after down police, it would not
11 have made a difference in the result. The jury could choose to
12 believe Fedele's testimony at trial in light of the testimony of other
13 witnesses at trial.

14 Petitioner's attorney was furthermore not ineffective in his
15 cross examination of witness Chavez. There was nothing establishing
16 that Chavez could not distinguish between the passenger side of the
17 car and the driver's side.

18 Lastly, petitioner has failed to show that his attorney failed to
19 adequately meet with him prior to trial. There is nothing showing
20 that his defense attorney was inadequately prepared at trial because
21 he did not meet with petitioner more often.

22 Therefore, the petition for a writ of habeas corpus is DENIED.

23 DATED: 8 May, 2007

24 PAUL BERNAL

25 JUDGE OF THE SUPERIOR COURT

26 cc: Petitioner
27 District Attorney
28 Research
CJIC



COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

Court of Appeal - Sixth App. Dist.

SIXTH APPELLATE DISTRICT

FILED

JUL 27 2007

MICHAEL J. YERLY, Clerk

By _____
DEPUTY

In re ALEX ROSALES,

on Habeas Corpus.

H031589
(Santa Clara County
Super. Ct. No. CC319535)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Bamattre-Manoukian, Acting P.J., Mihara, J., and McAdams, J.,
participated in this decision.)

Dated JUL 27 2007 BAMATTRE-MANOUKIAN, J. Acting P.J.

S155999

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ALEX JESSE ROSALES on Habeas Corpus

The petition for writ of habeas corpus is denied.

SUPREME COURT
FILED

MAR 26 2008

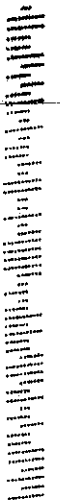
Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

ALEX Jesse Rosatz
V-76601 A4-147
P.O. Box 49020
Jones, Ca. 95040.



RECEIVED
APR 18 2008
Pmja
MICHAEL W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Clerk of the United States
Courts for the Northern
District of California.
430 Golden Gate Avenue
San Francisco Ca. 94102

